



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Miscellaneous Application 10 of 2010

TIMBERLAND (K) LTD. also known as

TIMBERLAND (1998) LTD.....APPLICANT

VERSUS

THE PERMANENT SECRETARY

MINISTRY OF ENVIRONMENT AND

NATURAL (MINERAL) RESOURCES.....RESPONDENT

RULING

1. This case is concluded as between the Applicant and the Respondent. The Applicant filed **Nakuru HCCC Misc. No. 595 of 2004 – Timberland (K) Ltd. –vs- PS, Ministry of Environment and Natural Resources**, which cause was concluded in the Applicant’s favour. The Applicant’s Bill of Costs was taxed in the sum of Kshs.3,095,159/=. The Certificate of Costs dated 26/03/2008 and the relevant order in the said cause were served upon the Hon. Attorney General and the PS Ministry of Environment together with a demand letter calling for payment of the taxed amount. Service was effected on 11/01/2010. To date the taxed costs have not been settled.
2. Consequent upon the Respondent’s failure to comply with the Applicant’s demand to pay the taxed costs, the Applicant applied for an order of mandamus to compel the Respondent to settle the party and party costs. That application for the order of mandamus was never opposed, on the ground that the Respondent was making arrangements to settle the Applicant’s taxed costs. When the Applicant obtained the order of mandamus, it caused the same to be served upon the Respondent, but the Respondent has remained indifferent hence the Applicant’s Notice of Motion application dated 19/02/2010.
3. By the said application the Applicant seeks the following ORDERS:-
 1. *THAT for reasons to be recorded, this matter be certified as urgent and it be placed before the duty Judge in the first instance.*
 2. *THAT in the first instance, this court does issue summons to the Respondent to appear in court on a day to be appointed by the court to show [cause] why he should not be punished for failure/refusal to comply with the orders of this court.*
 3. *THAT in default of the appearance and/or in default of compliance with the order of the court, this court does issue warrants of arrest against the Respondent.*
 4. *THAT costs of this application to be borne by the Respondent.*
4. The application is premised on the following five (5) grounds, that is to say:-
 - (a) *THAT the court issued an order of mandamus directing the Respondent to cause or order the payments of party and party costs in the suit of Kshs.3,095,192 arising from High Court Misc. No. 595 of 2005.*
 - (b) *THAT the said order was served upon the Respondent together with the penal notice.*

- (c) *THAT the Respondent has failed/refused to pay the party and party costs.*
- (d) *THAT despite the Respondent being the chief accounting officer of the Ministry of Environment, he has shown utter contempt of the proceedings of court.*
- (e) *THAT what is at stake is not only the rights of a litigation but efficacy of court orders and the respect for court proceedings and the Respondent should be summoned to court in the first instance to show cause why he should not be punished for contempt of court.*

5. The application is also premised on the affidavit of **BHUPENDRA M. PATEL** sworn on 19/02/2010. On the basis of the facts that have been stated above, the deponent avers that the Respondent is in utter disregard of the orders of this honourable court and is also bent on ridiculing not only the Applicant but the entire judicial process. The deponent wants the Respondent summoned to appear before court to show cause why he cannot be punished for contempt of court. The deponent has annexed to his supporting affidavit copies of proceedings and orders in this matter to date.
6. The application is opposed by the grounds of opposition dated 21/04/2010 and filed in court on the same day. The Respondent who did not appear in court for the hearing despite an order requiring him to do so, was represented by Mr. C.N. Menge, Principal Litigation Counsel of the Attorney General's Chambers. The application is opposed on the grounds that the Respondent is wrongly enjoined in the proceedings and that the application is also fatally defective and that the orders sought cannot be granted against the Respondent. It is also the Respondent's contention that the Applicant's application is an abuse of the court process.
7. At the hearing of the application, Mr. Githui, counsel for the Applicant reiterated the averments on the face of the application and in Mr. Patel's supporting affidavit. Mr. Githui urged the court to grant the orders sought so that the dignity of the court can be preserved.
8. When Mr. Menge, counsel for the Respondent rose to address the court, he started by offering an apology on behalf of the Respondent who was said to be attending to a patient at the Nairobi Hospital, hence unable to attend court as earlier ordered by the court on 18/02/2010. By the order of 18/02/2010, the Respondent was required to attend court personally on the day the matter next came up for hearing, to show cause why he should not be punished for failure/refusal to comply with the orders of the court. Mr. Menge reiterated the Respondent's grounds of opposition dated 21/04/2010 to oppose the Applicant's opposition.
9. It is to be noted that the Respondent herein has been in possession of all the orders that have been made in this matter. There has been correspondence between the Applicant's and the PS Ministry of Forestry and Wildlife on the subject matter. The Respondent has not denied that he was served with the court orders together with the penal notice. In fact by a letter dated 01/12/2009 being Ref. No. MEMR/A9.26/Vol. 1, written by one J. Munayi on behalf of the Respondent, counsel for the Applicant was asked to forward to the Respondent "*details of the judicial review to enable us urgently finalize this matter.*" The matter is yet to be finalized.
10. After considering all the above circumstances, I am of the view that the Respondent has no intention whatsoever of obeying this court's orders. On the 21/04/2010, the Respondent's counsel gave some flimsy excuse as to why the Respondent could not present himself to court to exonerate himself from blame for failing to comply with court orders. No details of the patient were given to the court. Noting that it was only 9.30 a.m., the court was not informed whether the case at the hospital, was an emergency or a normal hospital case. All this goes to show that the Respondent has no respect for this court from which he also seeks justice.
11. In the circumstances, and because the Respondent has refused to come to court as ordered on the 18/02/2010, I do now allow the Applicant's application dated 19/02/2010 in terms of prayer (3) thereof. The costs of this application shall be borne by the Respondent.

It is so ordered.

Dated and delivered at Nairobi this 27th day of April, 2010.

R.N. SITATI

JUDGE

Read and delivered in the presence of:-

Mr. Githui (present) for the Applicant

Mr. Menge (absent) comes in just after pronouncing verdict For the Respondent

Weche - court clerk