



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc Civ. Appli.698 of 2006

REPUBLIC.....APPLICANT

VERSUS

THE HON. ATTORNEY GENERAL 1ST RESPONDENT

THE PERMANENT SECRETARY MINISTRY OF HEALTH 2ND RESPONDENT

EX-PARTE..... GRACE WANJIRU MBURU

RULING

Before me is a Notice of Motion dated 9th July, 2007 filed by M/s Mamicha & Co. advocates for the ex-parte applicant named as **GRACE WANJIRU MBURU**. The respondents are described as the Attorney-General (**1st respondent**) and the Permanent Secretary Ministry of Health (**2nd respondent**). The application is purported to have been filed under section 5 of the Judicature Act (**Cap. 8**) and section 3A of the Civil Procedure Act (**Cap. 21**). The orders sought in the Notice of Motion are that –

(1) This Honourable Court be pleased to commit the

Respondent to civil jail for disobeying the order of this Honourable court issued on 20th April, 2007.

2. The cost of this application be borne by the respondent.

The application has grounds on the face of the Notice of Motion. Basically, the grounds are that the court issued an order of mandamus on 20th April, 2007 directing the respondent to pay or satisfy the decretal amount in Nairobi Civil suit No. 9851 of 2003. Secondly, that the said mandamus order was served on the Respondent on 28th May, 2007, and the respondent had not obeyed the said order. The application is supported by the affidavit of the applicant sworn on 4th July, 2007.

The order said to have been disobeyed was annexed to the supporting affidavit as “**GWM1.**” It reads as follows-

“IN CHAMBERS ON 20TH DAY OF APRIL, 2007 BEFORE HONOURABLE LADY JUSTICE WENDOH

ORDER

UPON READING the application dated 13th December, 2006, presented to this Honourable Court on 18th December, 2006 by Counsel for the applicant under part VI of the Law Reform Act and Order LIII of the Civil Procedure Rules, and upon reading the affidavit of **GRACE WANJIRU MBURU** sworn on the 13th December, 2006 and supported by annexures thereto, statement of facts dated 27th October, 2006 **AND UPON HEARING** Counsel for the applicant and Counsel for the Respondents; **IT IS HEREBY ORDERED BY CONSENT-**

1. THAT an order of mandamus be and is hereby issued to compel the Permanent Secretary of the Ministry of Health to pay and/or satisfy the decretal amount in civil suit No. 9851 of 2003.

2. THAT *there be no order as to costs.*

GIVEN under my hand and the seal of this Honourable Court at Nairobi this 20th day of April, 2007.

ISSUED at NAIROBI this 21st day of May, 2007.

DEPUTY REGISTRAR

HIGH COURT OF KENYA

NAIROBI.

The above order is stamped as having been served on the Permanent Secretary on 28th May, 2007, and on the Attorney-General on 16th July, 2007.

The current application is said, in the affidavit of service sworn on 23rd July, 2007, to have been served on the Attorney-General on 16th July, 2007 at 11 am. Mention notices were also served on the Attorney-general. Hearing notice was also on 14/5/2008 served on the Attorney-General and the Permanent Secretary Ministry of Medical Services for the hearing of the application on 26th May, 2008. No response to the application was filed, and neither did any of the Permanent Secretary or the Attorney-General appear in court or send Counsel to represent them at the hearing of the application.

The application was therefore technically not opposed. On the hearing date, Mr. Mungai, for the applicant made submissions in support of the application. Counsel submitted that the applicant was seeking for orders of committal to civil jail of the respondent (*Permanent Secretary*) for failing to comply with the orders of mandamus issued on 20/4/2007 and served on the Permanent Secretary on 28/5/2007. Counsel submitted that the Permanent Secretary had not complied with the court's order, nor had he offered any explanation for the failure to comply. Therefore, under the Judicature Act, this court had powers to punish him by issuing orders for his arrest and committal to civil jail for one (1) month at the cost of the applicant. Counsel submitted that, though the Ministry of Health was recently split into two, the Permanent Secretary to be committed to civil jail, was the Permanent Secretary for the Ministry of Medical Services.

I have considered the application and the submissions made by Counsel for the applicant. This application is not opposed. The jurisdiction of this court to punish for contempt of court is provided for under Section 5 of the **Judicature Act (Cap. 8)**, which provides-

5(1) *The High Court and the Court of Appeal shall*

have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.

(2) *An order of the High Court made by way of*

punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.

This court has powers to commit a person for contempt of court for disobeying court orders. The general rule governing the obligation of persons to obey court orders was stated in the case of **HADKINSON -VS- HADKINSON [1952] ALL ER 567**, in which Romer LJ stated at page 569-

“It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made against by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.”

Knowledge of such court order is necessary before one can talk of its disobedience. In our present case, the mandamus court order dated 20th April, 2007 for the Permanent Secretary Ministry of Health to pay and/or satisfy the decretal amount in civil suit No. 9851 of 2003 was served on the Permanent Secretary and stamped for receipt of such service on 28th May, 2007.

However, I observe that the amount to be paid by the said Permanent Secretary was not mentioned in the mandamus order, though the certificate of order against the Government dated 23rd August, 2006 refers to the amount of decree as Kshs.413,683/= together with further interest at the rate of 12% per annum from 12th October, 2005 until payment in full. In my view, the amount payable should have been stated in the mandamus order or annexed thereto and served on the Permanent Secretary. There is not even an indication that the decree or certificate of order was attached to the mandamus order when it was served on the Permanent Secretary. The disobedience of the mandamus order is the factor that has elicited these contempt proceedings. Therefore this application for imprisonment for contempt is, in my view, premature as the respondent might not have known what orders he or she was to comply with. I will strike out the application for the above reasons.

Consequently, and for the above reasons, I strike out the Notice of Motion dated 9th July, 2007. The applicant can however file a proper application for committal, after complying with the legal requirements that can sustain an application for committal to prison for contempt of court.

Dated and delivered at Nairobi this 16th day of October, 2008.

GEORGE DULU

JUDGE.

In the presence of-

Mr. Mungai for the applicant

Mr. Onyancha for respondent