



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

Civil Case 28 of 1998

NICODEMUS KEBASO:.....PLAINTIFF

VERSUS

THE CHAIRMAN BOARD OF GOVERNORS MATONGO LUTHEREN THEOLOGICAL COLLEGE:.....DEFENDANTS

RULING

I Have considered the application before me and the submissions by counsel. I have also carefully considered the explanations and apologies given by the Defendants.

I hereby do find that the Defendants have not complied with the consent Order made on 1st February,2006. This was made in pursuance of a previous Consent Order given on 20th July,2005. The Defendants were required to do the following:-

1. Furnish to the plaintiff a certificate for Diploma in Theology within 30 days, from 1.2.2006.
2. Furnish the transcripts for all the subjects taken for the Diploma in Theology from 1978 to date within 30 days from 1.2.06.

The Defendants have not complied with the said orders. The certificate for Diploma in Theology purported issued was not under seal neither was it signed by the authorized officers. Both these omissions were in violation of the Consent Order and the provisions of the Education Act.

With regard to the transcript for the subjects taken, I have already given my view in my previous ruling. The same was not a transcript. It was a litany of abuses and rebukes. In my view, it was vile and extremely malicious. If the contents of the transcript were true, then it meant that the plaintiff had substantially failed his examinations and was not entitled to the Diploma in Theology, the Defendants were purportedly giving. It meant that the plaintiff had not completed his course successfully. If this was the case, I do not see how they could enter into consent orders to issue him with the certificate.

It was on this basis that I issued the summonses on 8th March,2006 for the Defendants to appear before the court to show cause why they should not be placed in Civil jail for failing to comply with the Consent Orders and therefore for being in contempt of court.

Mr. Menezes, counsel for the Defendants made passionate submissions regarding his clients demeanor and that it was not their intention to disobey the court orders or to show disrespect of the court's orders

and authority. The Defendants through their counsel have offered to make amends and rectify the situation. They have asked for 30 days in order to supply a proper and valid certificate for the Diploma in Theology and which bears the College's Seal. They have also undertaken to provide a proper and regular transcript of the subjects taken by the plaintiff the basis upon which the certificate was being issued.

In HADKINSON –V- HADKINSON (1952) 2 All E.R. 567, Romer L.J. said:-

“ I would add in passing that an apology is no acceptable substitute for compliance with an order and will not in any circumstances be regarded in itself as a purging of contempt.....”

The Defendants in this case have accepted to purge their actions which seems to this court to have been contemptuous of the court orders. Whether this was done intentionally or not, may not possibly, be necessary to deal with now as the Defendant has requested for extension of time in order to comply with the court Order. This court was told that the Defendants have been found guilty of contempt previously and fined. This court wishes that this old, protracted and certainly acrimonious case comes to an end. This is a court of justice and equity and will always strive to conclude proceedings before it in the most civil manner irrespective of whether its decision aggrieves one or both parties.

The court will not disregard the extended apologies which have been conveyed by Mr. Menezes with sincerity and humility on behalf of his client. I was almost afraid that Mr. Menezes thought that he was the one accused of the disobedience.

As a result, I propose to give the Defendants another chance to demonstrate their recognition of the judgment and Orders in this suit and their willingness to comply. I, therefore, do hereby give the Defendants 30 days from today to comply with the Consent Orders of this court given on 1st February,2006. There shall be a mention date to confirm compliance.

DATED AND DELIVERED ON THIS 6TH DAY OF JUNE,2006.

M.K. IBRAHIM

JUDGE