



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

Misc Appli 160 of 2005

OSERO AND COMPANY ADVOCATES.....APPLICANT

VERSUS

LABHSONS LIMITED.....RESPONDENT

ARISING FROM HCCC NO. 204 OF 2002

LABHSONS LIMITED.....PLAINTIFF

VERSUS

MUNURA HAULERS T/A TAUSI TRAVELERS.....DEFENDANT

R U L I N G

The applicant has brought this application by way of a Notice of Motion dated 19th May 2006. It is said to have been made pursuant to the provisions of Order 50 rule 1 of the Civil Procedure Rules, as read together with Section 5 of the Judicature Act, and Sections 3 and 3A of the Civil Procedure Act.

Essentially, the applicant is asking this court to cite the respondent and Mr. Manvinder Singh Sokhi for contempt of court. Following upon the said citation, the applicant wishes to have the said Manvinder Singh Sokhi and the respondent, Labhsons (K) Limited either fined or alternatively committed to jail.

Before bringing this substantive application, the applicant sought and obtained leave of the court, to so do.

By way of a background, the applicant pointed out that on 26th August 2005, this court did order the respondent to file, in court, a bank guarantee for KShs. 500,000/=, as a precondition for stay of execution.

In an endeavour to meet the precondition, the respondent is said to have obtained a letter dated 31st August 2005, supposedly from Barclays Bank of Kenya Limited.

However, it later transpired that the said letter was an absolute forgery, for it was not even written on the authentic letter-head of Barclays Bank of Kenya Limited. Secondly, the said letter was denied by Barclays Bank of Kenya Limited, on the further ground that the respondent did not hold an account at that bank.

In the light of the fact that the letter in contention was filed in court with the intention of persuading the court that it was a legitimate bank guarantee, there can be no doubt that the court was supposed to place reliance on it.

As the document later turned out to be a complete forgery, there can be no doubt that the issue is very serious indeed.

Thereafter, the respondent is said to have repeated its attempts to utilise a forged document. The repeat was in the form of a document dated 19th September 2005, which was titled "Bank Guarantee." The said document was also, on the face thereof, issued by Barclays Bank of Kenya Limited. But that document was also later disowned by the bank, as being a forgery.

The applicant submitted that the actions of the respondent and of Mr. Manvinder Singh Sokhi in procuring forged "**bank guarantees**", on two occasions, and filing the same in court, was proof of the contempt they have for this court.

In my considered opinion, any person who knowingly procures or causes to be procured, a forged document, which he then presents to this court, with a view to persuading the court to grant him some orders, would be guilty of contempt for the court.

It cannot be over-emphasized that courts are the custodians of law and order. They are expected to safeguard the legal rights of all persons who appear before them.

Therefore, if any person presents forged documents in court, and tries to persuade the court that the said forgeries were the authentic foundation of his rights, such a person must be deemed to have little or no regard for the dignity of the court.

In the circumstances, whether or not the person presenting the forgeries succeeded in obtaining the orders he had sought, that would be irrelevant to an application against him, that he be cited for contempt of court.

In an endeavour to uphold the dignity of the court, such a person would ordinarily be cited for contempt and then hauled off to serve jail sentence. It is only by so doing, that the court would be sending a clear message that all persons should, at all times, not do anything which could lead the court into disrepute.

In his ruling dated 7th December 2005, the Hon. WAWERU J. held as follows:

"If it turns out that the client filed a forged bank guarantee, it will have committed a serious fraud upon the court and will be in grave contempt of the court. This will not only disentitle it to the equitable orders granted by Ochieng J., on 26th August 2005, but will also make it liable to severe penal consequences."

To my mind, there is no doubt whatsoever that the two guarantee instruments dated 31st August and 19th September 2005 were both forgeries. There is also no doubt that the said two instruments were filed in court by the respondent herein.

However, the respondents to this application both state that they had no idea that the instruments were forgeries. On his part, Mr. Manvinder Singh Sokhi explained that the instrument dated 26th August 2005 was given to him by a Mr. Joseph Mwaniki. The said Joseph Mwaniki is said to have been an employee at Barclays Bank of Kenya Limited from as early as 2002, at which time he was introduced to Manvinder, by Surinder Singh Sokhi, who is the father to Manvinder.

At the time of the said introduction, Joseph Mwaniki was the manager of the bank's Karen Branch, so says Manvinder. Therefore, when he met Mwaniki at the Karen Branch in August 2005, Manvinder

believed that Mwaniki was still working in that capacity.

When Mwaniki gave him the letter dated 31st August 2005, Manvinder says that he believed it to be a genuine document.

Upon that point, the explanation by Manvinder appears plausible.

He later learnt, from his advocates, that the court had rejected the letter dated 31st August 2005. And according to Manvinder, he returned to the Karen Branch of Barclays Bank, with a view to procuring a bank guarantee.

However, what I find absolutely curious is the fact that instead of seeking out “**the manager**” who had previously helped him, Manvinder went to the inquiries desk. It is there that he says, he found a gentleman who “**confirmed his ability to assist (him) procure a valid bank guarantee from the said bank.**”

After two to three days, the said gentleman is said to have provided Manvinder with the bank guarantee, which later turned out to be a forgery.

As the applicant herein has noted, the signatures on the letter dated 31st August 2005, and that on the “bank guarantee” dated 19th September 2005, appear to be very similar. Therefore, as the signatory to the letter is identified as Joseph Mwaniki, the Manager of Barclays Bank, Karen Branch, it would follow that the same person is the one who executed the “**Bank Guarantee**” dated 19th September 2005.

In the light of the fact that Manvinder had been introduced to Joseph Mwaniki in 2002, as the manager of the Karen Branch of Barclays Bank, one would have expected Manvinder to seek him out, instead of approaching an un-named gentleman, at the inquiries desk. Therefore, Manvinder’s story simply does not ring true. It sounds so unlikely, that I find myself unable to accept it. At the very least, Manvinder Singh Sokhi was careless. However, it does appear that he was a willing participant in the process of procuring the forged “**Bank guarantee**”.

In any event, the respondent did cause a forged instrument to be filed in court. But doing so, the respondent herein hoped to persuade the court to issue orders which would have been to its advantage. The act of filing the forged documents constituted the offence of uttering a false document, provided that it can be proved that the said action was done knowingly and fraudulently.

Of course, the respondents are not facing a criminal trial before me. But, as the Hon. WAWERU J. already observed, in his ruling quoted earlier herein, the respondents would be liable to “**severe penal consequences**”, if they are found to have committed contempt of court.

By virtue of the provisions of Section 5 (1) of the Judicature Act, the High Court and the Court of Appeal shall have 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.

In the case of **MWANGI H C WANG’ONDU Vs NAIROBI CITY COMMISSION [1988] LLR 1919**, the Court of Appeal emphasized the need for an applicant to satisfy the court that there was a proper and competent application before it.

The rationale for the need to observe the rules of procedure and practice was set out by **LORD DENNING MR in RE; BRAMBLEVALE LTD [1970] CH 128 at 137**, whereat he said:

“A contempt of Court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt. It is not prove by showing that, when the man was asked about it, he told lies.

There must be some further evidence to incriminate him.”

In this case, I have already come to the conclusion that the respondents’ story does not appear to hold water. In other words, I hold the view that he was telling lies about the manner in which he came by the forged bank guarantee as well as the letter which preceded it. To tell a lie whilst testifying under oath, is indicative of one’s contempt for the court .

But I do also acknowledge the following words of the Hon. VISRAM J. in **ROYAL MEDIA V TELKON KENYA [2001], 1 E.A 210 at page 240:**

“In my view, the rigid procedure as stated for sustaining contempt proceedings is necessary where the proceedings are commenced specifically for that purpose by the applicant.”

The application before me has been made specifically for the purposes of punishing the respondents for contempt of court. Therefore, in line with the view expressed by the Hon. VISRAM J. above, there is need for rigid compliance with the procedures applicable.

As set out in Section 5 (1) of the Judicature Act, the procedure to be adopted must be that utilised by the High Court of Justice in England. For that reason, we have to look to **“The Supreme Court Practice”**. Pursuant to the provisions of Order 52 rule 3 (2) of the Civil Procedure rules applicable in England, leave to apply for an order of committal would lapse automatically, unless within 14 days after such leave has been granted, the substantive motion had been entered for hearing.

In this case, the applicant notified me that he had been granted leave by the court on 7th February 2006. Thereafter, the substantive motion was filed on 25th May 2006.

In effect, the substantive motion was filed long after the leave to do so had lapsed.

In the case of **MR IAN LESLIE CAMPBELL & ANOTHER V CANADIAN HUNGER FOUNDATION, CIVIL APPLICATION NO. NAI 56 of 1994**, the Court of Appeal held that non-compliance with elementary but mandatory procedural rules, rendered the entire contempt proceedings a nullity.

It is to be noted that in that case the elementary procedure which had not been observed by the applicant was the requirement to endorse the Notice of penal consequence on the order. That alone was said to be sufficient to render the contempt proceedings a nullity. The learned judges of appeal went on to quote with approval their following words, in the case of **NYAMODI OCHIENG NYAMOGO & ANOTHER V KENYA POSTS & TELECOMMUNICATIONS CORPORATION, CIVIL APPLICATION NO. NAI 264 of 1993:**

“Wangondu’s case had correctly set out the requisite procedural steps to be taken before a party could be called upon to answer a charge of disobedience of a court order. The consequences of a finding of a disobedience being penal, the party who calls upon the Court to make such a finding must show that he has himself complied strictly with the procedural requirements.”

Regrettably, the applicant herein has not complied strictly with the procedural requirements. Therefore, although the respondents would appear to have conducted themselves in such manner as would bring the court into disrepute, by procuring and filing forged guarantees, the application for their citation and committal cannot be sustained. It is therefore dismissed.

However, in the light of the conduct of the respondents, this court holds the considered view that they were undeserving of an order that costs be paid to them. In the result, I order that each party will bear his own costs.

FRED A. OCHIENG

JUDGE

Dated and Delivered at Nairobi by Azangalala J this 7th day of November 2006.

F. AZANGALALA

JUDGE