REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 1445 OF 2001

GLADYS MOMANYI …….. PLAINTIFF

VERSUS

DR. GEORGE OMONDI OYOO AND FOUR (4) OTHERS …… DEFENDANT

R U L I N G

On 29-11-02 this Court found the Defendants/ applicants here in contempt and fined them Kshs 2000/= each and avoided the purported order of dismissal hitherto issued by them against their employee. It is against this order that the applicants filed this application dated 5-12-02 and a further one dated 23-1-03 both under Order 41 rule 4; Order 50 rules 1, 2 & 3 and section 3A of the Civil Procedure Rules and Act Cap. 21 respectively asking for extension of the orders by Hon. Rimita J. given on 5-12-02 revoking a stay for 50 days.

The reasons in support are contained in the supporting affidavit by Brown Kitur sworn on 5-12-02 saying that the implementation of the order would cause substantial loss as parties have lost faith and trust in the Plaintiff/Respondent and that they would give security. But in reply the affidavit of Plaintiff/Respondent sworn on 29-1-2003 says that the Defendants/applicants have not shown the nature of substantial loss they would suffer whereas she has children to pay fees for and only depends on that income.

The principle upon which the court awards stay of the execution of its orders is now well settled in our jurisdiction. The Court of Appeal in several cases including that of Kenya Shell Ltd. V. Benjamin Karuga Kabiru and Ruth Wairimu Karuga Civil Application No. NAI 97 of 1986 says that the applicant must show that execution or enforcement would render a proposed appeal nugatory and if that is shown then a stay can properly be given but the court must also consider that a successful litigant should not be kept out of the enjoyment of his judgment. Platt JA said in that judgment that:-

> "It is usually a good rule to see if Order 41 rule 4 of the Civil Procedure Rules can be substantiated. If there is no substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event.' "substantial loss, in its various forms is the cornerstone of both jurisdictions for granting a stay …"

The substantial loss here is not shown rather the applicants have given reasons and justifications for not obeying the court order. First they say there is no trust between the employer and employee and by that I believe the Respondent seems to evoke the principle that in a case of wrongful dismissal the servants remedy lies in damages only and there would be no declaration of right for one to continue in employment, but the issue here is one of contempt. It is contempt to interfere with a litigant or a party to an action. In the famous case of ATTORNEY GENERAL Vs. TIMES NEWSPAPERS LTD [1974] AC

273 . Lord Diplock L.J. said there that:-

> "all citizens should have unhindered access to the constitutionally established courts of Criminal or Civil jurisdiction for the determination of disputes as to their legal rights and liabilities".

So improper pressure meant to deter or prevent a party from bringing an action in court or inducing a party to suppress certain evidence or to give false evidence constitutes interference with due administration of justice and amounts to contempt. It does not matter that subtle measures are employed. Wrongful interference with a party during the pending of proceedings is actionable contempt but it is also contempt to interfere with a potential party see PAYMOND v. HONEY (1983) AC I; [1982] 1 AllER 750; it is advisable to resort to the Law of Contempt in Employment cases where employees complain of discrimination; threat of liability for contempt used by courts to punish wayward employers would deter them from practicing victimizing conduct. However whether in a finding of contempt the court ought to give damages to the complainant; or whether a ruling on contempt can give the victim a right to reinstatement of employee where victimization has resulted in the loss of a job, or a particular position, are matters for adjudication. The question I must consider now is should alleged contemnor disobey a court order because he perceives one or any of those pending matters for adjudication or, may be in his favour? that the court order is wrong? No, I do not think so, the court's order must be obeyed whether wrong until set aside. Romer L.J. in HADKINSON v. HADKINSON (1952) p. (288) said:-

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

To show substantial loss, therefore, in a contempt matter would require showing something more that would not affect the notion that courts order has first to be obeyed. It would appear that in a situation like this the applicant ought first to purge his contempt then apply for stay or show on the merits that the contempt is justifiable by reason that unproportinate damage would occur to him if he is made to obey the court order without a stay being granted or that it is illegal. Otherwise, I do not see what substantial loss would be if his contempt continues unabated. A contemnor being a person on the wrong cannot have the court use its discretion in his favour by turning a blind eye to that wrong.

I think the applicant has not shown this to be the case and I dismiss the application for stay. I make no order as to costs.

Dated this 25th day of March 2003.

A.I. HAYANGA

JUDGE

Read to Mr. Momanyi.

Read to Mr. Nyamu holding brief for Mr. Nyakundi.

A.I. HAYANGA

JUDGE