



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MISC.1117 OF 2002**

**JOHN KAMAU ICHARIA .....APPLICANT**

**V E R S U S**

**ZAKAYO CHERUIYOT**

**Aka ZACHEAUS CHERUIYOT .....RESPONDENT**

**R U L I N G**

The applicant under Notice of Motion dated 1st October 2002 seeks this court's order to have Permanent Secretary in charge of Internal Security committed to prison for contempt for disobeying court's orders of 15th October 2001. The cited contemnor Zakayo Cheruiyot is the Permanent Secretary in the Office of the President and is being cited in his capacity as the accounting officer for the Ministry concerned. The orders disobeyed were given on 15th October 2001 and 20th September 2001 in the HCC.NO.2857 of 1997 requiring the Ministry to pay JOHN KAMAU ICHARIA damages. In that suit the applicant was awarded general damages in the amount of KShs.450,000/= for wrongful arrests, assaults and battery.

The contemnor has opposed the application through affidavit by Paul Kipkosgei Rotich saying that there is an order of stay already staying the order the subject matter of the contempt proceedings. Secondly that there is no order requiring that the Permanent Secretary ought to have paid the decretal amount and that no penal order was served on the Permanent Secretary. Mr. Kariuki replied saying that the Permanent Secretary was served with the certificate.

The issue here as I see it is whether there was contempt at all and if so whether proper procedure has been applied allowing for the detention of the Permanent Secretary. Mr. Rotich's position is that contempt cannot be there since the order to be enforced was stayed by the court.

It is generally accepted that the government or a Minister of the government or a Permanent Secretary or any official of the government must obey court orders and on failure to do so may have such orders enforced on him by sanctions for contempt even when he committed it in his official capacity and not on a personal one.

Section 21 of Government Proceedings Act Cap 40 provides that a judgement creditor who has obtained judgment against the government should after 21 days of the order apply to court to issue him with a certificate containing particulars of that order. Section 21 ss3 provides:-

This provision means that the order for payment would be suspended which means that it would not be of any consequence. But in this case the order of contempt was committed when the order was current and alive. An order to be obeyed must be so obeyed until the same is discharged or set aside and this obtains even if the person affected by the order believes it to be irregular or void it must be obeyed whether or not it should have been granted or accepted in the first place.

See (ISAACS v ROBERTSON [1985] AC 97)

The question therefore is whether the order not obeyed initially attracts condemnation later when it does no longer cause an offence. In other words whether it can be applied retrospectively.

I think looking at it there could have been an act of contempt but to apply it retrospectively when the offending breach is not reprehensible is not justifiable.

I think to exercise my discretion here in favour of the application is because really contempt is a jurisdiction applied to enforce and support the authority of the court and to punish acts meant to interfere with or prejudice the administration of justice. It is not intended to avenge the wrong suffered by the party for the act of contemnor. This is Civil contempt where alleged contemnor is said to have disobeyed a court order. It is legally permissible for a Civil contempt to be waived. I think there is a discretion in this court in these circumstances to do what is just, and the just decision is to me as stated above to obtain pruric victory.

It would be like a hypothetical Case.

I refuse to make the order and dismiss the application.

**Read this 20th June 2003.**

**A. I. HAYANGA**

**J U D G E**