



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
H.C.C.CIVIL APPEAL NO.102 OF 1999

NATIONAL LOTTERY LIMITED PLAINTIFF

VERSUS

BETTING CONTROL & LICENCING BOARD DEFENDANT

R U L I N G

The appellant **NATIONAL LOTTERY LTD** had applied to the Betting Lotteries and Gaming Board for a public Lottery Licence/permit under section 5 of the Betting, Lotteries and Gaming Act Cap 131 but his application was rejected.

Being aggrieved by that decision of the Board appealed to this Court under section 62 of the Act. This Court in its Judgment of 17th March, 2000 allowed the appeal and issued an order that the appellant be issued with a permit/permits to promote three hundred and sixty draws/raffle/lotto forth with without further conditions, upon receipt of the requisite permit fees of six thousand shillings per draw totaling **Kshs.2,000,000/=**.

The Respondent was served with that Court Order but he never acted. The appellant in compliance with this Court's order had deposited the said requisite fees of **Shs.2000,000/=** with the Court as ordered. He then applied for contempt proceedings and served the respondent with a penal notice.

The appellant had sought orders that the respondent be committed to civil jail for 6 months. The matter came before me on 10th April, 2001. In my ruling of 4/5/2001 I ordered that the respondent be reserved with the order and the penal notice. The respondent never appeared, as ordered again on 18/5/2001.

On 18/5/2001, this court again made an order for the said Chief Executive of the Respondent to appear in Court in person on 30th May, 2001 but he never appear. But instead of him appearing in person as ordered, he appeared through his counsel Mrs. Madahani who told the Court and submitted that it is a cardinal principle of law and natural Justice that a person being sought for committal for contempt must be given a hearing.

She cited two pending applications by the respondent. The first application was dated 6th April, 2001, which was filed after the respondent had been served with the orders in that application he sought orders that the Judgment dated 17th March, 2000 be reviewed varied and or set aside. The second application was dated 25th May, 2001 which sought orders that the ex-parte orders made by this Court on 18th May, 2001 be set aside.

In the first place the appeal was heard and Judgment was delivered in the presence of both counsels. No action was taken for over one year before the application to review the same was filed. No appeal was preferred, as the Provisions of the Act are precise and clear. The second application was for orders to stay

this Court's order of 18/5/2001 which. This order simply gave the chief Executive of the Respondent an opportunity to appear in person.

That notwithstanding, contempt for has no audience before the Court until he has purged the contempt.

The Chief Executive of the Respondent cannot be heard to complain that he has not been given opportunity to be heard. The fact of the matter is that even when this Court has ordered the Respondents to appear before the Court to be heard, they have refused and/or neglected to comply therefore the issue of the Respondent not being given enough time to be heard does not arise.

The Counsel for the Respondent went further to submit before this court that the licence has not been issued due to the fact that the Board has not been constituted. However being an officer of the Court and also being a Public Servant, she should not be or misled the Court, in this particular point she has knowingly misled the Court by stating that the Betting Control and Licencing Board has not been constituted. A casual perusal of the Kenya Gazette proves that already the Board has been constituted by the Minister responsible under Gazette Notice No.2520 dated 11th April, 2001 which appointed the Board and Gazette No.2521 dated the same day which appointed the Chairman of the Board. Therefore in my opinion, it is quite wrong for any advocate and more so from the Attorney General's chambers to mislead the Court.

This Court has given the Respondent enough time to comply with the court order but the Respondent has deliberately ignored the some and disobeyed the Court order with impunity. Court orders must be taken seriously by all regardless of their status in society and this Court has an obligation to guard and protect its dignity by punishing the contemptors appropriately. And as I have said above the court cannot give audience to the contemptor unless and until the contemptor has purged the contempt.

Mr. Eliud Gitau the Chief Executive Officer of the Respondent did not bother to appear even when he had been served with the Penal Notice, on previous occasions. I order that if he is not before the Court, he be arrested and be escorted to this Court to be Committed to Civil jail for a period of six months. This order be directed to the Officer Commanding Central Police Station to effect the arrest.

I order that this order be served by the applicant's advocate.

Dated and delivered at Nairobi this 31st day of May, 2001

J. L. A. OSIEMO

JUDGE