



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 406 OF 2018

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

CABINET SECRETARY FOR MINISTRY OF INTERIOR AND

COORDINATION OF NATIONAL GOVERNMENT.....1ST RESPONDENT

DIRECTOR, DEPARTMENT OF IMMIGRATION SERVICES.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

EXPARTE APPLICANT:.....SAMIRA TARIQ QURESHI

RULING

1. The *ex parte* Applicant has filed an application by way of a Chamber Summons dated 24th August 2020 seeking leave to commence contempt of court proceedings against the Director, Department of Immigration Services, the Second Respondent herein for wilful disobedience of the Orders granted in Miscellaneous Civil Application Number 406 of 2018.
2. The application is supported by an affidavit sworn on 24th August 2020 by Henry Asugah Ongicho, the *ex parte* Applicant's advocate. In summary the grounds for the application are that judgment was delivered herein on the 7th November, 2019 directing the Second Respondent to consider the Applicant's Application for citizenship within the next thirty (30) days of the Judgment date. Further, that the decree was extracted and served upon the 2nd Respondent on 11th November 2019 and upon the 3rd Respondent on 2nd March, 2020. However, that in spite of the aforesaid, the 2nd Respondent has willfully neglected and refused to comply with the orders granted by the Court despite several reminders.
3. The *ex parte* Applicant annexed copies of the said judgement and decree, and of correspondence with the Respondents on the same.
4. I have considered the *ex parte* Applicant's application, and note that after the entire Contempt of Court Act was declared unconstitutional on 9th November 2018 by Mwita J. in **Kenya Human Rights Commission vs Attorney General & Anor (2018) eKLR**, the applicable law on contempt of Court is now the English Common law. This was the holding by this Court in **Republic vs Principal Secretary, Ministry of Defence Ex parte George Kariuki Waithaka [2019] eKLR** as follows:

“37.The procedure existing before the enactment of the Contempt of Court Act was restated by the Court of Appeal in Christine Wangari Gachege vs. Elizabeth Wanjiru Evans & 11 Others [2014] eKLR. In that case the Court found that under Rule 81.4 of the English Civil Procedure Rules, which deals with breach of judgment, order or undertaking. The English law on committal for contempt of court was applied by virtue of section 5(1) of the Judicature Act which provided that:

“The High Court and the Court of Appeal shall have the same 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.”

38. This section was repealed by section 38 of the Contempt of Act, which Act is now no longer operative, however, the substance of the common law is still applicable under section 3 of the Judicature Act. This Court is in this regard guided by

the applicable English Law which is Part 81 of the English Civil Procedure Rules of 1998 as variously amended...”

5. It is notable that under the English law it is not necessary to obtain leave to commence contempt of Court proceedings. This position was explained by the Court of Appeal in Christine Wangari Gachege vs. Elizabeth Wanjiru Evans & 11 Others [2014] eKLR thus:

“An application under Rule 81.4 (breach of judgment, order or undertaking) now referred to as “*application notice*” (as opposed to a notice of motion) is the relevant one for the application before us. It is made in the proceedings in which the judgment or order was made or the undertaking given. The application notice must set out fully the grounds on which the committal application is made and must identify separately and numerically, each alleged act of contempt and be supported by affidavit(s) containing all the evidence relied upon.

The application notice and the affidavit or affidavits must be served personally on the respondent unless the court dispenses with service if it considers it just to do so, or the court authorizes an alternative method or place of service.

It is clear from this summary that leave, now called “*permission*” is not required where committal proceedings relate to a breach of a judgment, order or undertaking....

We find on the basis of the new Civil Procedure Rules (of England) which are now contained in the Second Supplement to the 2012 White Book that no leave is required before bringing an application, like the one before us, for committal for contempt relating to breach of this court’s order....”

6. To this extent, there will be no prejudice in determining the *ex parte* Applicant’s application at this stage, and I will dispense of the said application by granting the appropriate orders. In the premises, I accordingly make the following orders:

I. The *ex parte* Applicant shall file and personally serve the Respondents with the Chamber Summons dated 24th August 2020, a substantive application for contempt of Court, a copy of this ruling and a mention notice within thirty (30) days of today’s date.

II. There shall be no order as to costs of the Chamber Summons dated 24th August 2020.

III. This matter shall be mentioned on 23rd November 2020 for further directions.

IV. In view of the Ministry of Health directives on the safeguards to be observed to stem the spread of the current COVID-19 pandemic, this Court shall hear and determine the Applicant’s substantive Chamber Summons on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

V. All the parties shall file their pleadings and submissions electronically, by filing them with the Judiciary e-filing system, and send copies by electronic mail to the Deputy Registrar of the Judicial Review Division at judicialreview48@gmail.com and asunachristine51@gmail.com.

VI. The parties shall also be required to file and send to the Deputy Registrar of the Judicial Review Division their respective affidavits of service evidencing personal service, by way of electronic mail to judicialreview48@gmail.com with copies to asunachristine51@gmail.com.

VII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division’s causelist for mention on 23rd November 2020.

VIII. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the *ex parte* Applicant and Respondents by electronic mail by close of business on Thursday, 15th October 2020.

IX. Parties shall be at liberty to apply.

7. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 12TH DAY OF OCTOBER 2020

P. NYAMWEYA

JUDGE