



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION NO. 135 OF 2016

(Before Hon. Justice Mathews N. Nduma)

OMBUYA BAGAKA.....PETITIONER

VERSUS

KENYA SCHOOL OF GOVERNMENT.....RESPONDENT

RULING

1. By a Ruling dated 21st April, 2017, Ndolo J disallowed Petitioner's application dated 8th November, 2016 and vacated interim orders issued with respect to the application.
2. The Petitioner/Applicant noted Appeal No. 128 of 2017 against the decision of the learned Judge which was slated for hearing on 2nd November, 2017. The court does not know the status of that appeal and it is likely this matter has been overtaken by events.
3. That notwithstanding the court has been prayed to find that the Respondents are in contempt of interim orders issued by Abuodha J on 24th April, 2017 and extended by Nduma J on 18th May, 2017 in that on 19th May, 2017 the officials of the Respondent while aware of the said court order and in complete and blatant disregard of it proceeded to withdraw all salary and benefits entitled to the Petitioner, maliciously retracting even the half salary that was previously remitted to the Applicant.
4. The court is urged to intervene lest, the applicant becomes destitute.
5. The Respondents vide Soita, Emmanuel, State Counsel, filed notice of preliminary objection to the application dated 20th September, 2017 as follows:-
 - (i) That the Application dated 20th September, 2017 is contrary to Section 30(1), 30(2), 30(3), 30(4), 30(5), 30(6) of the contempt of Court Act.
 - (ii) That the application violates section 21(4) of the Government Proceedings Act.
6. The Respondent in addition had filed an application dated 29th May, 2017 seeking to set aside the extension of the orders by Nduma J on 18th May, 2017.

Determination

7. The court outrightly recognizes that the merits or otherwise of the orders issued by Ndolo J. is with the

Court of Appeal and this court is functus officio on the matter.

8. With regard to the orders of stay pending Appeal issued by Abuodha J on 24th April, 2017 and extended by Nduma J on 18th May, 2017, similarly, once this court issued the orders, it became functus officio until the Appeal is heard and determined.

Contempt Application

9. With regard to whether or not Director General Dr. Ludek Chweya and Director Finance and Administration Dr. Nuna Mohammed are in contempt of court, the court renders itself as follows.

10. Justice Ndolo J in her ruling delivered on 21st April, 2017 dismissed the Petitioner's Notice of Motion Application dated 8th January, 2016 and specifically found that by the time the Petitioner/Applicant came to court, the decision to dismiss him from employment had already been taken by the Kenya School of Government Council. There was no decision to stay, meaning that any violation could only be remedied pursuant to full hearing of the petition.

11. The orders for stay issued by Abuodha J on 24th April, 2017 and extended by myself on 18th May, 2017 were issued without a proper disclosure of the nature and import of the ruling by Ndolo J .

12. In other words, there was nothing to be stayed by the court since the ruling of Ndolo J was a simple declaration on the status quo as at the time the Petitioner/Applicant came to court.

13. The orders issued subsequently, amounted to nothing since the Petitioner/Applicant had already been dismissed from employment according to Ndolo J.

14. The learned Judge had directed that the suit proceed on its merits to determine the lawfulness or otherwise of that dismissal.

15. Accordingly, the application to find the Respondent and its named officials in contempt of court lacks substance, the Petitioner/Applicant having failed to prove the same on the standard required by law, that is to say almost higher than proof on a balance of probabilities but not exactly beyond reasonable doubt, see **Ochino & Others v Okombo & Others (1989) eKLR 165 C.A.**

16 The application is dismissed with costs.

Dated and Signed in Kisumu this 2nd day of May, 2018

Mathews N. Nduma

Judge

Delivered and signed in Nairobi this 30th day of May, 2018

Maureen Onyango

Judge

Appearances

Mr. Okweh Achiando for Petitioner/Applicant

M/s. Sita Emmanuel State Counsel for Attorney General

Anne Njung'e – Court Clerk