



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**MISC APPLICATION NO. 12 OF 1996**

**GEORGE OWINO.....APPLICANT**

**VERSUS**

**ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**THE PERMANENT SECRETARY MINISTRY OF WORKS...2<sup>ND</sup> RESPONDENT**

**R U L I N G**

1. On the 26/4/2017 this court granted the applicant orders that:

1. The accounting officer in the Attorney General's Chambers do release to the applicant the sum of Ksh. 237,438 with interest on the same amount at 14% per annum with effect from 1<sup>st</sup> March , 1993.
2. That leave is granted to the applicant to file contempt proceedings against the 2<sup>nd</sup> respondent, the Permanent Secretary Ministry of Public Works, for his failure to comply with the order of the court for payment of Kshs. 237,581.50 with interest at 14% from 1<sup>st</sup> March, 1993.

2. The applicant contends that the said orders were served on the respondents on the 13<sup>th</sup> July, 2017 but that the respondents have failed to comply with the orders. The applicant has now filed an applicant dated 30<sup>th</sup> July, 2018 seeking for orders that:

1. That this honourable court be pleased to find and hold that the 1<sup>st</sup> Respondent, The Attorney General and the 2<sup>nd</sup> Respondent, The Permanent Secretary Ministry of Works are in contempt of court.
2. That this honourable court be pleased to hold that as a consequence of their acts of contempt, The Attorney General and the Permanent Secretary Ministry of Works be committed to jail in such place and for such period of time as this court may please.
3. That this honourable court be pleased to grant such other orders and directions as may be appropriate in the circumstances.
4. That the honourable court in the alternative be pleased to order payment of Kshs. 1,035, 229. 68, being the total decretal sum plus the interest accrued.
5. Costs of this application be granted to the applicant.

3. The grounds of the application are as contained in the face of the application and are supported by the affidavit of the applicant. The application was canvassed by way of written submissions by the advocates for the applicant, **Mwamu & Co. Advocates**, and the state counsel acting for the respondents. The advocates for the applicant submitted that the orders made on 26/4/17 were granted in the presence of the state counsel. That the same were served on the respondents who have not made any payments as ordered by the court. Therefore that the respondents are in contempt of the court and the court should hold them in contempt of the court.

4. The state counsel did not file any papers to oppose the application but they did file an authority, **Republic Vs Sports Kenya & 2 others** exparte **Caroline Mungai & 25 others (2018) eKLR**.

5. The application is made under article 159 of the constitution of Kenya and sections 1A, 1B and 3 A of the Civil Procedure Act. In my view these provisions do not apply in contempt proceedings as there is a clear procedure for such set by the law in the Contempt of Court Act, 2016.

6. The application for contempt that is before this court is made against public officers. Section 30 of the Contempt of Court Act, 2016, sets out the procedure to be followed where an application for contempt is sought against public officers. The section provides that:-

1. Where a state organ, government department, ministry or corporation is guilty of contempt of court in respect of any undertaking given to a court by the state organ, government department, ministry or corporation, the court shall serve a notice of not less than thirty days on the accounting officer, requiring the accounting officer to show cause why contempt of court proceedings should not be commenced against the accounting officer.
2. No contempt of court proceedings shall be commenced against the accounting officer of a state organ, government department, ministry or corporation, unless the court has issued a notice of not less than thirty days to the accounting officer to show cause why contempt of court proceedings should not be commenced against the accounting officer.
3. A notice issued under subsection 10 shall be served on the accounting officer and the Attorney- General.
4. If the accounting officer does not respond to the notice to show cause issued under subsection (1) within thirty days of the receipt of the notice, the court shall proceed and commence contempt of court proceedings against the accounting officer.
5. Where the contempt of court is committed by a state organ, government department, ministry or corporation, and it is proved to the satisfaction of the court that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of any accounting officer, such accounting officer shall be deemed to be guilty of the contempt and may with the leave of the court be liable to a fine not exceeding two hundred thousand shillings.
6. No state officer or public officer shall be convicted of contempt of court for the execution of his duties in good faith.

7. It is therefore clear that before any civil contempt of court proceedings are instituted in disobedience of a judgment, decree or order, the applicant must first move the court to issue a notice to show cause against the accounting officer of the state organ, government department, ministry or corporation concerned. Such notice is to be served on both the accounting officer and the Attorney General. If no response to the notice is received, the court may then at the expiry of the said thirty days' notice period proceed to commence contempt of court proceedings against the concerned accounting officer-**See Odunga J in Republic Vs Sports Kenya & 2 others Ex- parte Caroline Mungai & 25 others (2018) eKLR.**

8. The applicant in this case has not sought for and the court has not issued notice to show cause against the accounting officer before commencing contempt of court proceedings. The application dated 26/4/2017 is only seeking for orders for payment of the money and is not a notice to show cause to the accounting officer. It is then clear that contempt proceedings should not have commenced until such notice is served on the accounting officer and the Attorney General.

9. The procedure for execution of decrees against the government is set out in the Government proceedings Act, cap 40 laws of Kenya. The procedure was aptly summarized by Githua J in **Republic Vs Permanent Secretary Ministry of state for Provincial Administration and Internal security** exparte **Fredrick Manoah Egunza (2012) eKLR** where she stated that :-

*“In ordinary circumstances , once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/ goods under section 21(4) of the Government Proceedings Act. The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in section 21(1) and (2) of the Government proceedings Act (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon. Attorney general. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment. Once the certificate of order against the Government is served on the Hon. Attorney General, Section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon.*

10. It is clear from the above said procedure that before the applicant commences contempt of court proceedings against the Attorney General he should show that the Attorney General has been served with a certificate of costs from the court that issued the decree. There is no such certificate attached to the application to indicate that it has been served on the Attorney General.

11. The order of the court made on 26/4/2017 has been served on the office of the Attorney General as indicated by a stamp on a copy of the order filed with the court. However the issue of service of the order does not arise at this stage as the applicant has not followed the proper procedure in commencing contempt proceedings against the respondents.

In the foregoing the application for contempt of court against the respondents is premature. The application date 30/7/2018 is accordingly dismissed with costs to the respondents.

**Delivered, dated and signed at Kakamega this 4<sup>th</sup> day of October, 2018.**

**J. NJAGI**

**JUDGE**

In the presence of.

N/A .....for applicant

N/A.....respondents

George .....court Assistant

Parties:

Applicant .....absent

Respondent.....absent