



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KAKAMEGA.

PETITION CASE NO. 9 OF 2013.

JOAN ONDEYO OLUCHIRI ::: PLAINTIFF.

VERSUS

CLERK VIHIGA COUNTY ASSEMBLY

BENSON ONZERE

VIOLET AMBIYO::: DEFENDANTS.

RULING

INTRODUCTION.

1. The 1st respondent herein was found guilty of disobeying a lawful court order. He was to show cause why he should not be committed to civil jail for a term not exceeding six (6) months for deliberate disobedience of the court orders.

2. He has filed a replying affidavit dated 20th June, 2016. He depones therein that his services as clerk of Vihiga County Assembly were terminated vide the letter dated 17th day of July, 2015. He explains the steps he took to contest the said termination. See paragraphs 5-7 of the said affidavit. He admits that in April, 2016 he was served with a notice to show cause why execution should not be issued against him. He appeared in court on 18th July, 2016 and was asked to file his response within 14 days.

3. He admits further that when the matter in question came up for ruling on 17th day of December, 2014 he was still in office but denies being served any order then. He also admits that he was aware of the outcome of the petition and claims to have complied by stopping the gazettment by the government printer/press on 9th December, 2013 but the speaker to the County Assembly went ahead to swear in ONZERE BESON MUDANGALE as the external member of the board.

Submissions.

4. The parties canvassed the Notice to Show Cause by filing and exchanging written submissions. The petitioners have pointed out the contradiction of the contents in the 1st respondent's affidavit sworn on 17th December, 2013 in response to petitioner's application dated 2nd December, 2013 where under paragraph 3 (h) he stated that by the time the order of 2nd December, 2013 was served upon him restraining gazettment, he was unable to stop it as he had already made the payments. They claim that the respondent has now made an about turn against those averments and states that he wrote to the government printer.

5. They further submit that despite the 1st respondent being aware of the orders restraining gazetteement, he went ahead and allowed the speaker to affirm the 2nd respondent on the 11th December, 2013.

6. In his submissions, the 1st respondent maintains that he was diligent and dedicated in service as clerk to the Vihiga County. He submits that he was never served with the order dated 2nd November, 2013 but if the same was served then it was effected upon the office of the clerk Vihiga County Assembly which he believes was acted upon. He raises the issue that the office of the clerk to Vihiga County Assembly, the 1st respondent is a creature of the law hence independent and totally distinct with any of its holders, hence the liability actions, omissions and commissions which are purely administrative should be visited upon the office and not upon the holders.

Determination.

7. Having been found guilty of disobeying the court orders herein, the task of this court is to decide whether the 1st respondent should be punished and jailed for a period of six (6) months or not. Most of the issues raised by the 1st respondent have been determined by this court in its prior ruling and this court will not revisit what it has already determined. The issue of service or the office of clerk of Vihiga County Assembly being separate from the holder has also been a matter discussed in the previous ruling.

8. Contempt of court has been defined as:-

“Conduct that defines the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable by fine or imprisonment.”

9. In the case of **Teachers Service Commission vs. Kenya National Union of Teachers and 2 others [2013] eKLR Ndolo J.** observed that:-

“The reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law.”

10. I take the same view as the learned judge. The reason why power is vested in courts to punish for contempt is to safeguard the rule of law which is fundamental in the administration of justice. The 1st respondent has not given any reason why he should not be punished for contempt.

11. It has been demonstrated that he was in office when the orders of this court were issued. He was aware of the case and knew the results of each application and the petition herein. He has not shown any remorse for what he did. He misdirected the whole of the Vihiga County Council which went ahead and performed an illegality which not only affected the applicant herein but also the general public. He demeaned this court and the orders of this court. He ought to be punished.

12. This court having found the 1st respondent and the holder of the office thereof JOSEPHAT ALUSIOLA MUSAMBAYI in contempt this court AND THUS MAKES THE FOLLOWING ORDERS;

i) *The 1st Respondent to pay a fine of Ksh 200 000; IN DEFAULT;*

ii) *He stands committed to jail for six (6) months;*

iii) *He has a right of appeal within fourteen (14) days from the date hereof;*

iv) *The petitioner shall have cost of the application.*

SIGNED, DATED at KAKAMEGA this 10TH day of NOVEMBER, 2016.

C. KARIUKI

JUDGE.

In the presence of:-

.....**Akinyi for Rauto** **Plaintiff.**

.....**N/A**.....**Defendant.**

.....**Anunda** **Court Assistant.**