



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 15 OF 2016

MUNYAKA KUNA CO. LIMITEDPLAINTIFF

VERSUS

JOSEPH KIMANI HERMAN1ST DEFENDANT

T. WAMBUGU WARUE2ND DEFENDANT

LUKA CHEGE 3RD DEFENDANT

E. GATU NDUNGU4TH DEFENDANT

SAMUEL NJUGUNA WAWERU5TH DEFENDANT

DOUGLAS KAMOTHO MWANGI6TH DEFENDANT

GATIRU KANYORO7TH DEFENDANT

RULING

This is a dispute between the plaintiff, a limited liability company and the defendants who are either members and or shareholders of the plaintiff. The plaintiff obtained ex-parte orders of stay against the defendants who were about to hold an annual general meeting pending the hearing of the application *inter partes*. This order was premised on an application dated 22nd January, 2016.

Later on 29th January, 2016 the plaintiff obtained another order against the defendants based on the same averment as in the previous application. This time however, the order restrained the defendants from holding the annual general meeting pending the hearing and determination of the case.

The foregoing notwithstanding, it is alleged that the defendants in disobedience of the said orders held a special general meeting of the plaintiff company on 23rd January, 2016 and purportedly elected directors of the plaintiff company, invaded the offices and took over the management of the said company in total disobedience of the said court orders.

Following the purported breach of the said court orders, the plaintiff moved the court by way of Notice of Motion against the defendants seeking orders that their properties be attached and the said defendants be detained in prison for a period not exceeding six months. The application is opposed by the defendants

who aver that the said orders were never served upon them.

The application was canvassed by way of written submissions and several authorities have been cited. It is now established that as a general rule, no order of court requiring a person to do or abstain from doing any act can be enforced unless a copy of the order has been served personally upon such a person. If the court is satisfied that the terms of the order are clear and unambiguous then such a person will be punished.

An order seeking to cite a person for contempt and therefore liable to punishment, attracts serious consequences. This is because the punishment for contempt of a court order necessarily leads to deprivation of either a party's freedom or imposition of a fine or attachment of property. It is therefore important that proof of service and proper notice be proved beyond reasonable doubt. **(See Ochino & Anoter Vs. Okombo & 4 Others (1989)KLR 165**

In **Misc application 1742 of 2005 Clementina Aoru Kabbis Vs Andrew Bwire Obara** the court said as follows,

“There is no doubt in my mind that court orders are sacrosanct and must be obeyed. For disobedience of such orders to warrant the committal of a contemnor to civil jail, it must be proved beyond reasonable doubt that the contemnor was personally served with the order in question.”

See also **HCCC NO. 450 OF 1995 Isack J. Wanjohi & Another Vs. Roseline Macharia**. The plaintiff has alleged that the order endorsed with the penal notice was served upon the defendants. It is also submitted that the outcome of this application rests on finding of the court on whether the defendants had knowledge of the said court orders.

With profound respect, personal service is an essential requirement in such cases. From the material before me the affidavit of service has not been annexed to confirm the service of the orders in dispute. Service like the contents of the order must be unequivocal and unambiguous.

Further to the foregoing, the order said to have been issued on 29th January, 2016 may have been so issued after the fact. I say so because it also related to the meeting said to have been convened on 23rd January, 2016 and no party can be held to be in breach of an order that was issued after the event.

I wish to add that having looked at the record before me, and considering the pleadings of the parties herein, I believe this is a matter that can properly be resolved by way of alternative dispute resolution such as arbitration or mediation. I say because, this is a dispute between members of the plaintiff and cohesion will be maintained if an amicable settlement were to be accepted by the parties herein. However, I leave this to the parties because it is not an issue before me.

I am not persuaded that the defendants were properly served and that they disobeyed the court orders. The application is therefore dismissed with costs to the defendants.

Dated, signed and delivered at Nairobi this 8th Day of November, 2016.

A. MBOGHOLI MSAGHA

JUDGE