



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(Coram: Gicheru, Cockar, Muli JJ A)**

**CRIMINAL APPEAL NO 20 OF 1993**

**NJERU .....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

(Appeal from an Order of the High Court of Kenya at Meru (Kuloba J)

dated 19th February, 1993 in Criminal Case No 46 of 1992)

**JUDGMENT**

On 18th March, 1993 we allowed this appeal and quashed the order of the superior court committing the appellant to prison for a period of four (4) days with effect from 19th February, 1993 for contempt of Court. We now give our reasons.

Section 5 (1) and (2) of the Judicature Act, chapter 8 of the Laws of Kenya provides that:

“(5).(1) 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.

(2) An order of the High Court made by way of punishment for contempt of Court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court”

From the foregoing provisions, the law of contempt of Court applicable in this Country is that of England.

Lord Diplock in the case of *Attorney General v Times Newspapers Ltd* [1974] AC 273 at page 307 letter G said:

“Contempt of Court” is a generic term descriptive of conduct in relation to particular proceedings in a Court of law which tends to undermine that system or to inhibit citizens from availing themselves of it for the settlement of their disputes”.

In the same case at pages 315 and 316 letters H and A of the said law report, Lord Simon of Gilaisdale observed that the law of contempt of Court:

“Is the means by which the law vindicates the public interest in due administration of justice - that is, in the resolution of disputes, not by force or by private or public influence, but by independent adjudication in Courts of law according to an objective code.”

and as Lord Denning, MR said in *Morris and Others v Crown Office*, [1970] 2 QB 114 at page 122 letters B and C:

“the importance of it is (that): of all places where law and order must be maintained, it is here in these Courts. The course of justice must not be deflected or interfered with. Those who strike at it strike at the very foundations of our society.”

The real offence of contempt of Court therefore comprises of the wrong done to the public by weakening the authority and influence of the Court of law which exists for their good alone with the result that their loyalty to the laws of the land is fundamentally shaken: and when this happens, it is the most fatal and dangerous obstruction to justice. See the case of *Rex v Davies*, [1906] 1 KB 32 at page 40.

As Salmon LJ rightly pointed out in *Morris and Others v Crown Office*, *supra*, at page 129:

“The sole purpose of proceedings for contempt is to give our Courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented.”

Therefore, as was observed by Lord President Clyde in *Johnson v Grant* [1923] SC 789 at page 790, the essential features of the offence of contempt of Court are:

“In interfering with the administration of the law; in impeding and perverting the course of justice..... It is not the dignity of the Court which is offended a petty and misleading view of the issues involved - it is the fundamental supremacy of the law which is challenged.”

It is the due administration of justice that is at stake. In this regard, the observation of Lord Diplock in the *Attorney General v Times Newspapers Ltd supra*, at page 389 letters B and C is pertinent, *viz*:

“The due administration of justice requires first that all citizens should have unhindered access to constitutionally established Courts of criminal or civil jurisdiction for the determination of disputes as to their legal rights and liabilities; secondly, that they should be able to rely upon obtaining in the Courts the arbitrament of a tribunal which is free from bias against any party and whose decision will be based upon those facts only that have been proved in evidence adduced before it in accordance with the procedure adopted in Courts of law; and thirdly that, once the dispute has been submitted to a Court of law, they should be able to rely upon there being no usurpation by any other person of the function of that Court to decide it according to law. Conduct which is calculated to prejudice any of these three requirements or to undermine the public confidence that they will be observed is contempt of Court.”

On 29th January, 1993, the High Court of Kenya at Meru while dealing with Criminal Case No 46 of 1992 made an order that the said case be mentioned on 19th February, 1993 and that a production order do issue. When that case came up for mention on the latter date, it transpired that no production order had been received by the Prison Authorities at Meru to facilitate the production of the accused persons by them to that Court. Thereafter, the superior court record reads:

“Court:

Call the clerk concerned with production orders to explain why since November, 30 1992 production orders have not been issued or issued properly and in good time for the accused to attend court.

R Kuloba

Judge

19/2/1993.”

It would appear that the appellant appeared before the superior court shortly thereafter and he is recorded to have told that Court this:

“I did not see the order of 29/1/1993 for issuing production orders for accused to come to Court today. I did not read the file when it came to me from the Court. I do not have a reason for not having read the file on its return from the Court. The file was brought to me after Court.”

To this, the reaction of the superior court was as follows:

“Court:

This is a disappointing omission on the part of the court official. He is not taking his work seriously.

More seriously, however, conduct of this kind is flagrant disregard for the constitutional rights of the accused. The accused are in remand. You do not care to take action to bring them to the Court with reasonable speed or at all.

It may appear to you a small matter, but it is the little things of a negative character which destroy the people’s faith in our system of justice and its administration. What will an ordinary Kenyan feel when he hears that an accused has not been brought to the Court on account of failure to prepare a production order?

To disregard a clear order of the Court when it is all there for you to read it and act on it, is to be in contempt of Court. And contempt of Court is the one thing I shall not condone.

I punish this, your contempt by committing you to prison for four (4) days from today. I so order.

R Kuloba

Judge

19/2/1993.”

From the proceedings of the superior court as are set out above, it would appear that the appellant’s indictment consisted of dereliction of his duty. He admitted as much and the superior court judge dealing with him observed as much. Indeed the judge found the appellant to be in contempt of Court in not reading the order of the superior court and acting on it. This was not conduct in relation to the proceedings before the said Court that was calculated to interfere with the administration of the law by impeding and perverting the course of justice. We think that the appellant’s conduct did not amount to a weakening of the authority and influence of the superior court in the proceedings in respect of which the order the subject - matter of this appeal was made with the resultant tendency to obstruct the administration of justice or to challenge the supremacy of the law. In truth, the entire proceedings before the superior court culminating in the order of 19th February, 1993 committing the appellant to prison for four (4) days for contempt of Court suggest that what was at stake was not the due administration of justice but the appellant’s conscientiousness in the due performance of his duty. That did not offend the law of contempt of Court as we have attempted to outline above. It was for these reasons that we allowed the appellant’s appeal as is set out at the beginning of this judgment.

Dated and Delivered at Nairobi this 9<sup>th</sup> day of June, 1993

**J.E. GICHERU**

.....

**JUDGE OF APPEAL**

**A.M COCKAR**

.....

**JUDGE OF APPEAL**

**M.G. MULI**

.....

**JUDGE OF APPEAL**