

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

MISC CASE NO.325 OF 2014

OJIENDA & CO.ADVOCATES.....APPLICANT

=VERSUS=

CITY COUNCIL OF NAIROBI.....RESPONDENT

RULING

1. The applicants filed a Notice of Motion dated 14th February 2018 in which they sought orders committing the County Secretary and Chief Finance Officer of the respondent for disobedience of the Court's orders given on 28th April 2015. They also sought an order compelling the county Legal Secretary of the respondent to comply with the court's order of 28th April 2015 by settling the applicants' taxed fee of Kshs.389,222.12.

2. The applicants contend that on 28th April 2015, costs in their favour were taxed at Kshs.389,222.12 and a certificate of taxation was duly issued on 19th April 2016. The respondent which was duly served with the order has failed to comply with the said order despite several reminders. The applicants therefore contend that besides the two officers being punished for contempt of court, the respondent's Legal Secretary should also be compelled to settle the taxed costs.

3. The respondent which was duly served with the application did not file any grounds of opposition or replying affidavit. I have considered the application together with the annexures thereto. I must now decide on whether the officers of the respondent are in contempt of court or whether the County Legal Secretary should be compelled to comply with the order of 28th April 2015.

4. In an application for contempt of Court an applicant has to demonstrate that there was a court order issued; that the said court order required the contemnors(s) to do or not do a certain act; that the contemnor(s) was or were served with the court order or had knowledge of the order and that the contemnor(s) disobeyed the order without any excuse.

5. In the instant case, the applicants are contending that the contemnors disobeyed the court order of 28th April 2015. I have perused the Court file but I cannot see any order of court issued on 28th April 2015. The ruling in respect of the taxation was delivered by the Deputy Registrar on 23rd March 2016. A certificate of taxation was given on 19th April 2016. There is therefore no order which would have been given on 28th April 2015 which would have been disobeyed.

6. The applicants are also seeking the order of this court compelling the County Legal Secretary of the Respondent to comply with the order of 28th April 2015. As I have already found out hereinabove, there was no court order given or issued on 28th April 2015. The County Legal Secretary cannot be compelled to comply with a non-existent order. I therefore do not find any merit in this application which is hereby dismissed with no order as to costs.

It is so ordered

Dated, Signed and delivered at Nairobi on this 17th day of May 2018.

E.O.OBAGA

JUDGE

In the absence of:-

M/s Maloba for Mr Ojienda for Applicant

Court Assistant: Hilda

E.O.OBAGA

JUDGE