



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION NO. 2 OF 2020

IN THE MATTER OF: ARTICLES 10, 19, 20, 21, 22, 23, 27, 30, 258 AND 259 OF THE CONSTITUTION

AND

IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

AND

IN THE MATTER OF: THE LAKE BASIN DEVELOPMENT AUTHORITY

BETWEEN

SAMUEL OKETCH OPONDO

(suing on his own behalf and on behalf of 107 others).....PETITIONERS

VERSUS

LAKE BASIN DEVELOPMENT AUTHORITY.....RESPONDENT

RULING NO. 2

1. On 3 February 2021, the Court allowed the firm of Lugano & Lugano Advocates to come on record for of Odera Maurice Calary, Fred Obware Oduk, Mary Atieno Osore, Mary Jemimah Ouko, Festus Kimkemboi Koech and Johnson Odoyo Nyajong who were some of the Petitioners herein (the applicants for purposes of this Ruling).

2. At the same time, the Court directed the firm of Eliakim Owala & Co. Advocates to release or surrender to the firm of Lugano & Lugano Advocates all documents it held in respect of the applicants.

3. The firm of Eliakim Owala & Co Advocates did not comply and on 31 May 2021, the applicants filed a Motion seeking orders:

(1) ...

(2) THAT this Honourable Court be pleased to cite the law firm of Eliakim Owala & Co. Advocates for contempt of court having deliberately disobeyed the orders of the Court issued on 4th February 2021.

(3) THAT upon grant of the above prayer, the Honourable Court be pleased to hold Eliakim Owala the proprietor of the aforementioned law firm in contempt of court orders and commit him to civil jail for a period of six (6) months.

(4) THAT the Honourable Court be pleased to grant any other or further orders of the Court geared towards protecting the dignity and authority of the court.

(5) THAT the costs of this application be awarded to the Defendant/applicant against the Plaintiff/Respondent together with interest thereon.

4. The grounds advanced in support of the Motion were that the Court orders of 4 February 2021 had been served upon the law firm of Eliakim Owala & Co. Advocates but the firm had refused to release the documents to the firm of Lugano & Lugano Advocates.

5. When the Motion was placed before the Court on 3 June 2021, it directed the applicants to serve it upon the firm of Eliakim Owala & Co. Advocates, and further that the said firm file and serve responses on or before 30 June 2021 ahead of giving further directions on 7 October 2021.
6. On 7 October 2021, Mr Ouma representing Mr Owala informed the Court that the parties were in talks and were likely to file a consent.
7. The Court gave the parties time to discuss settlement and also directed that the consent be filed before 8 October 2021. The consent was not filed and the Court gave the parties up to 16 November 2021.
8. The parties did not settle on a consent and on 16 November 2021, the Court indicated that it would deliver a Ruling today.
9. The firm of Eliakim Owala & Co. Advocates did not file a response to the Motion.
10. The Court has considered the Motion and supporting affidavit. The Motion stands unopposed.
11. It is not in dispute that the Court ordered the firm of Eliakim Owala & Co. Advocates to surrender documents in respect to the applicants to the firm of Lugano & Lugano Advocates.
12. The said firm was aggrieved and it filed a Notice of Appeal against the Ruling/order on 10 February 2021.
13. On the same day, a representative of the firm acknowledged receiving a certified copy of the Ruling/order delivered on 10 February 2021.
14. On 20 February 2021, the aforesaid firm filed a Motion seeking stay of execution of the order and leave to appeal.
15. The application was withdrawn on 26 April 2021.
16. The narration above demonstrates that indeed there was a Court order of 4 February 2021, directing the firm of Eliakim Owala & Co Advocates to release documents held in favour of the applicants to the firm of Lugano & Lugano Advocates, and that the said firm was aware of the orders.
17. The assertions that the firm of Eliakim Owala & Co. Advocates have failed or refused to surrender the documents have not been rebutted or controverted.
18. No lawful cause for refusing to surrender the documents has been given.
19. The Court therefore finds wilful disobedience with its orders of 4 February 2021.
20. The Court finds and cites Eliakim Owala advocate for contempt of court, and orders the Officer Commanding Police Station, Central Police Station, Kisumu to arrest and bring the said Eliakim Owala, advocate as soon as he is arrested or so soon thereafter as is practical for mitigation and sentencing.
21. The Petition to be mentioned on 23 February 2022, or as soon as the contemnor is arrested, if earlier.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 9TH DAY OF FEBRUARY 2022.

RADIDO STEPHEN, MCIARB

JUDGE

APPEARANCES

FOR APPLICANTS LUGANO & LUGANO ADVOCATES

FOR PETITIONERS ELIAKIM OWALA & CO. ADVOCATES

FOR RESPONDENT OLEL, ONYANGO, INGUTIAH & CO. ADVOCATES

COURT ASSISTANT CHRISPO AURA