



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO.E.559 OF 2020

(Before Hon. Lady Justice Anna Ngibuini Mwaure)

KENYA CONCRETE STRUCTURAL

CEREMIC TILES WOODPLY AND INTERIOR

DESIGN WORKERS UNION.....CLAIMANT

VERSUS

INTEX COMPANY LIMITED.....RESPONDENT

RULING

1. The Claimant/Applicant brought an application dated 21st September, 2020 seeking the following orders:-

(i) That the application be and is hereby certified as urgent to be dispensed with the first instance owing to the urgency of the matters.

(ii) That this Honourable Court be pleased to issue an interim order directing the Respondent by itself, agents, assigns, servants, and or representatives or any other person claiming through them or otherwise to immediately commence deductions and remittance of trade union dues from all the members of the Claimant as per the check off forms already served upon them in March 2019 and to continue in deductions and remittance into the Claimant's authorized and specified Bank Account as per the Legal Notice No.50 of 2014 dated 8th May, 2014 pending the hearing and determination of this Application and main suit.

(iii) That upon the hearing and determination of this application, this honourable court be pleased to issue an order directing the Respondents by themselves, their agents, assigns, servants, and or representatives or any other person claiming through them or otherwise to pay all the unremitted union dues to the Claimant's Account as prescribed in the forms "S" duly served upon it from April, 2019 to-date from its own funds as provided for under Section 19(6) of the Employment Act, 2007 Laws of Kenya.

(iv) That this honourable court be pleased to issue an order restraining the Respondent their agents, assigns, servants, and or representatives or any other person claiming through them or otherwise from any form of harassment and/or intimidation upon the Claimant's members on the basis of this suit.

(v) That the Respondent bear the costs of this application.

(vi) That this honourable court be pleased to grant such orders or reliefs as it deems fit and just in the circumstances.

(b) That upon an ex-parte hearing of the Claimant's application dated 21st September, 2020 and based on the facts on the face of the application, grounds adduced in the notice of motion, supporting affidavit of **DISHON ANGOYA** and documents therein, the honourable judge issued the following orders:-

That the motion and statement of claim be served before giving of further directions on 6th October, 2020.

(c) That the application together with the orders of the honourable court issued on 23rd September, 2020 were accordingly served upon the Respondent on 23rd September, 2020 and a return of service though a sworn affidavit of court process server Ms. Mary Gatavi Njue confirms the same.

(d) That this matter coming up for hearing inter-parties of the Claimant's application dated 21st September, 2020 on 6th October, 2020 and based on the facts on the face of the application, grounds adduced in the notice of motion, supporting affidavit of **DISHON ANGOYA** and documents therein, the honourable judge issued the following orders;

(i) that pending the hearing and determination of the main suit, and interim order is hereby issued directing the Respondent by itself, agents, assigns, servants, and or representatives or any other person claiming through them or otherwise to immediately commence deductions and remittance of trade union dues from all the members of the Claimant as per the check off forms already served upon them in March, 2019 and to continue in deductions and remittance into the Claimant's authorized and specified Bank Account as per the Legal Notice No.50 of 2014 dated 8th May, 2014.

(ii) That an order is hereby issued directing the Respondents by themselves, their agents, assigns, servants, and or representatives or any other person claiming through them or otherwise to pay all the unremitted union dues to the Claimant's Account as prescribed in the forms "S" duly served upon it from April, 2019 to-date from its own funds as provided for under Section 19(6) of the Employment Act, 2007 Laws of Kenya.

(iii) That an order is hereby issued restraining the Respondent their agents, assigns, servants, and or representatives or any other person claiming through them or otherwise from any form of harassment and/or intimidation upon the Claimant's members on the basis of this suit.

(e) That the orders of the court issued on 6th October, 2020 was duly served upon the Respondent on 8th October, 2020 and a return of service though a sworn affidavit of court process server Ms. Nancy Gatavi Njue filed on 29th October, 2020 confirms the same.

2. The Claimant/Applicant states that the orders issued on 6th October, 2020 were duly served upon the Respondent **INTEX COMPANY LIMITED** on 8th October, 2020 and a return of service through a sworn affidavit of court process server **Ms. MARY GATAVI NJUE** filed on 2nd October, 2020 was filed in court.

3. The Claimant/Applicant avers they forwarded a tabulations of all unremitted union dues to the Claimant account as prescribed in the form "S" duly served upon the Respondent from April, 2019 to date though a letter dated 12th October, 2020 to the Registrar of the court as well as to the Respondent.

4. The Claimant/Applicant says the Respondent had an opportunity to ensure compliance to the orders of the court but they deliberately ignored the same.

5. The Claimant/Applicant as a result of failure by the Respondent **INTEX COMPANY LIMITED** to comply with the above orders filed an application dated 2nd February, 2021 seeking the following orders;-

6. (a) That the honourable court be pleased to cite

Mr. Vikas Gehlot for contempt of court for disobeying orders of court issued on 6th October, 2020.

(b) That the honourable court be pleased to confirm

Mr. Vikas Gehlot to Civil jail for 6 months or any period that the honourable court deems fit and until they purge the contempt and such other orders be made as may be deemed fit for disobeying the said court orders.

(c) That the contemnors **MR. VIKAS GEHLOT** to compelled

to purge the contempt.

(d) That the Respondents/Contemnors be denied

audience completely till they purge the contempt herein.

(d Any other or further orders of this honourable court geared towards protecting the dignity and authority of the court.

(e) That costs of this application be borne by the Respondent.

7. An interested party Kenya Building of construction timber and furniture employees union meanwhile filed an application dated 26th January, 2021 where they sought to be enjoined in the suit as an interested party. The orders were granted on 28th October, 2021 to be enjoined as an interested party.

The interested party was ordered to file response to the statement of claim and pending application within 14 days.

Hearing of application dated 2nd February, 2021 was fixed to be heard on 29th November, 2021.

8. The application was fixed for hearing on 29th November, 2021 and the court ordered on that date that the interested party to file their response within 7 days and Claimant Kenya Concrete Structural Ceramics Tiles Woodplys and Interior Design Workers Union were ordered to file their submissions and serve.

Finally, the Respondent was ordered to file their submissions within 7 days and the interested party was also given 7 days to file their submissions.

9. The Claimant filed their submissions dated 8th December, 2021 and interested party filed on 2nd February, 2022.

To date the court has not received Respondent's submission.

10. The court has considered all the processes herein upto this point.

The Respondent were served with the orders of the court on 8th October, 2020 which orders the Respondent/Contemnor have to date not obeyed. There is no stay of execution of those orders which orders were issued by a honourable and competent court.

11. The court is supported by the observations by J. Odunga in which he found and held "in my considered view, court orders are not made in vain and are meant to be complied with. If for any reason a party has difficulty in complying with court orders the honourable thing to do is to come back and explain the difficulties faced by the need to comply with the order.

Once a court order is made in a suit the same is valid unless set aside on reviewed on appeal (**REPUBLIC VS THE KENYA SCHOOL OF LAW & OTHERS (MCL APPLICATION NO.58 OF 2014)**).

In **CASE OF ECONET WIRELESS KENYA LIMITED VS MINISTER FOR INFORMATION AND COMMUNICATION OF KENYA AND ANOTHER (2005) eKLR** the court held "it is essential for the maintenance of the rule of law and order that the authority and the dignity of the courts are upheld at all times....."

12. There is clear disobedience to court order and the Respondent/Contemnor has not attempted to mitigate the said disobedience. The court orders are meant to be obeyed in order to maintain law and order and as court held in the **CASE OF TEACHERS SERVICE COMMISSION VS KENYA NATIONAL UNION OF TEACHERS & OTHERS PETITION NO.23 OF 2013** court orders are not meant for cosmetic purposes. They are serious decisions that are meant to be and ought to be complied with strictly.

13. The court will first to meet all righteousness mention that the enjoining of the interested party to the proceedings did not in any way purge or excuse the Respondent from obeying the court orders. After all the third party was not a party to the application of 21/9/2020 and as the saying goes the Respondent/Contemnor must carry its cross.

14. The only thing the third party can do is ask for a date to have the court re-open the application dated 21st September, 2020 or file their application because of their issues which they are raising otherwise their enjoining in the suit does not excuse the Respondent obeying the court orders.

15. As in the case of **SAMUEL MWERU AND OTHERS VS NATIONAL LAND COMMISSION CASE NO.443 OF 2017** The court found that in cases of contempt of court the question is whether disobedience of court order was deliberate and mala fide and must not be accidental disobedience.

16. The court has scrutinised the evidence and the facts surrounding this case and finds there is sufficient proof by the Applicant that the Respondent/Contemnor disobeyed and or disregarded the court orders issued on 6th October, 2020 deliberately and with no excuse.

HAVING RULED SO:

(i) The court thereby cites **MR. VIKAS GEHLOT** or the duly recognised Directors of the Respondent Company for contempt of court for disobeying orders of court issued on 6th October, 2020.

(ii) The Respondent/Contemnor **MR. VIKAS GEHLOT** or the duly recognised Directors of **INTEX CO. LIMITED** be compelled to purge the contempt.

(iii) The Contemnor/Respondent is fined Kshs.50,000/= and in default 3 months imprisonment to pay within 15 days.

17. Costs of the application be borne by the Respondent/Contemnor.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 24TH DAY OF MARCH, 2022.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of court fees.

ANNA NGIBUINI MWAURE

JUDGE