



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 323 OF 2017

EVERLYNE A. OWUOR AND 37 OTHERS.....CLAIMANTS/APPLICANTS

VERSUS

COUNTY GOVERNMENT OF MIGORI.....1ST RESPONDENT

MIGORI COUNTY PUBLIC SERVICE BOARD.....2ND RESPONDENT

RULING

1. The Claimants/Applicant in the application dated 18/5/2020 are seeking to have the Governor of Migori County Zachary Okoth Obado and Christopher Rusana, the County Secretary, Migori County to be committed to Civil Jail for six months for being in contempt of the Court's judgment and decree delivered on 7/7/2019 and have in their written submissions dated 24/9/2020 stated thus-

“the existence of the judgment delivered on the 7/7/2019 is not disputed and neither are the contents of the Decree that follows thereafter. What is in dispute however is the allegations of deliberate intent to not satisfy the judgment by the Respondents to the detriment of the Applicants.”

2. Going by the aforesaid submissions the service of the judgment and the decree of the Court, on the 1st and 2nd respondents the subject of this application is not in dispute.

3. The only issue for determination is whether the named persons in the application are in willful disobedience of the said judgment and the decree.

4. In the judgment of the Court delivered on 7/7/2019, the Court ordered the respondents to conduct a Verification exercise of the Claimants/Applicant's to confirm their suitability for confirmation on permanent basis based on the minimum qualification (***form four Certificates***) within 30 days.

5. The respondents were further ordered to file a report of the concluded verification within the 30 days “failing which all the 38 employees shall be deemed to be on permanent and continuous employment of the respondent and are entitled to all minimum benefits provided by the Employment Act, 2007 and any other benefits already enjoyed by them.”

6. The judgment was self -executing upon any default by the respondents.

7. To date, the respondents have not filed the verification report nor have they sought enlargement of time to complete the exercise.

8. The only option left to the respondents is to confirm the employment of the claimants/Applicants as directed by the Court. The window for verification has already lapsed.

9. The argument by the respondents that the judgment and decree was served on the Legal Department is neither here nor there, the respondents having admitted knowledge of the judgment and the decree.

10. The named persons being the Governor and the County Secretary are the Principal officers of the 1st and 2nd respondents and Execution of the Judgment and the decree has to be communicated by them upon the relevant action being taken by the 1st and 2nd respondents.

11. The respondent further argues that as at the time the judgment was issued, the 2nd Respondent had not been properly constituted until recently when the 2nd respondent commenced its operations.

12. It was incumbent on the respondents to seek enlargement of time to implement the judgment and the decree but they did not.

13. However, subjecting a person to Civil Jail upon a finding of guilt for contempt is not a light matter. Contempt proceedings are criminal in nature and the Court requires a high degree of prove that indeed, the named persons were in willful disobedience of the Court Order.

14. It is incumbent on the applicants to demonstrate that they have directly engaged the named persons on the need to implement the Court Order and that the named persons acted with utter disregard of the Court Order despite the direct communication to them of the judgement and decree and the need to comply with it.

15. The prove of these matters is not beyond reasonable doubt, but is above a balance of probabilities.

16. See the case of **Molly Wambui Kiragu –vs- The Governor, Nandi City County and the Secretary, Nairobi City County, Miscellaneous Application No. 20 of 2015**, Mativo J, held:-

“Where a state Organ, government department, Ministry or Corporation is guilty of contempt of Court in respect of any undertaking given to a Court by the state agency, the Court shall serve a notice of not less than thirty days on the accounting officer, requiring the accounting officer to show cause why contempt of Court proceedings should not be commenced against the accounting officer.”

17. In the present case, the Organ responsible for implementing the Court Order is the 2nd respondent, Migori County Public Service Board. The decisions of the Board are communicated by the County Secretary to the designated officer responsible for implementing the decision of the Board.

18. In the present case, there is no evidence that the Board sat to do the verification of the Claimants/Applicants as directed by the Court nor is there evidence that the County Secretary communicated to any officer, including the Governor to implement the judgment and decree of the Court.

19. Accordingly, whereas the Governor cannot be said to be in willful disregard of the Court Order, the County Secretary who is the authorised officer in this case has not demonstrated any willingness to either comply with the Court Order and or to seek enlargement of time within which to comply with the Court Order.

20. Given that implementation of the Court Order is incumbent on the Board as an organ, the Court has not found that the County Secretary is directly responsible for the failure by the Board to implement the Court Order.

21. The Court therefore finds that the applicants have not proved that the Governor and the County Secretary are in willful contempt of the Court Order.

22. The Court however directs the applicant to serve a 30 days’ notice on the Board, through the County Secretary to show cause why they should not be held in contempt of Court for failing to confirm in employment the Claimants/Applicants as ordered by the Court in its judgment delivered on 9/7/2019.

23. Respondents to pay costs of the application.

Dated and delivered at Nairobi this 11th day of February, 2021.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. 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 18 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.

MATHEWS N. NDUMA

JUDGE

Appearances

Okongo Wandago & Co. Advocates for Claimants/Applicants

Gordon Ogola Kipkoech Advocates for the Respondents

Chrispo: Court clerk