



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 388 OF 2018**

**KENYA UNION OF SUGARCANE PLANTATION AND**

**ALLIED WORKERS.....CLAIMANT /APPLICANT**

**VERSUS**

**WEST KENYA SUGAR COMPANY LIMITED...RESPONDENT**

**RULING**

1. Application dated 22/10/2020 was heard ex parte by the Court and directions given on 27/4/2020.
2. The Respondent filed a Preliminary Objection to the application on 1/7/2020 dated the even date as follows:-
  - a. "That the Notice of Motion Application dated 22/4/2020 is invalid and a nullity *ab initio* as it is founded upon the contempt of Court Act that was declared unconstitutional in its entirety on 9/11/2018.
  - b. That the Notice of Motion Application dated 22/4/2020 has been brought under provisions of an unknown Laws that are not applicable in Kenya."
3. The application dated 22/4/2020 is filed "Under Order 17 and Order 38 of the Employment and Labour Relations Court Rules, the Contempt of Court Act, 2016 Section 3, 4(1), 5 & 7, the inherent powers of the Court, Kenya Constitution Articles 36, 41, 47 and 162(2) and all the enabling provisions of the Laws of Kenya."
4. The applicant prays for the following Orders inter alia:-
  - i. Spent.
  - ii. That the respondents be declared to have violated and disobeyed lawful Orders of this honourable Court as pronounced in the Judgment on the 30<sup>th</sup> January, 2020 at the Employment and Labour Relations Court Bungoma.
  - iii. That the Human Resource Manager Mr. Duncan Abwawo being a Senior Servant/Manager of the respondent be summoned to appear before this honourable Court on the earliest date possible to show cause why he should not be cited for Court contempt
  - iv. That this honourable Court be pleased to issue Orders of imprisonment or detention of the respondent manager named above, for a period of not less than 6 months or a fine of two hundred thousand for disobedience of Court Judgment.
5. The application is supported on grounds (1) to 16 set out on the notice of Motion the gravamen of which is that the respondent have willfully defied the judgment of the Court delivered on 30/1/2020 in the presence of the respondent's Counsel and a copy of the judgment served on the respondent on 3/2/2020.
6. That the respondent through Mr. Duncan Abwawo is attempting to circumvent the judgment of the Court by conducting verification exercise of the signatures of the employees who are members of the claimant/applicant in respect of whom they were ordered to deduct and remit Union dues immediately. That the respondents also are trying to defeat the judgment by outsourcing Labour and by terminating the employment contracts of the claimant's members listed herein.

7. That the respondents have nothing to lose by effecting the deductions. They are in violation of Labour laws and recognition agreement between the parties.
8. The applicant has relied on the provisions of the Contempt of Court Act, 2016, Sections 3, 4(1) (a) 5 and 7 which provisions were declared unconstitutional by the High Court in a Judgment dated 9/11/2018.
9. Furthermore, the applicant relies on unknown Order 17 and 38 of the Employment and Labour relations Court Rules, which Orders are non-existent.
10. Contempt of Court proceedings against a person are criminal in nature and the pleadings ought to be specific and as precise as possible.
11. An application for contempt based on non-existent provisions of the law is fatally defective in that the respondent is placed in a situation where they have to speculate the law applicable to the application and therefore the respondent is denied opportunity to properly defend themselves in a matter with possible punitive consequences.
12. Even though, the Constitution of Kenya, 2010 under Article 159(1) (d) provides:-

**“Justice shall be administered without undue regard to procedural technicalities”,**

an applicant who seeks to have the liberty of another person curtailed and/or punitive measures taken against that person is under a mandatory obligation to bring a proper application citing the specific Law applicable that has been violated and under which provision the application has been brought to enable the respondent to mount defence.

13. The applicants have failed in this respect and the Court upholds the Preliminary Objection to the application by the respondent.
14. The application dated 22/4/2020 is accordingly dismissed with costs.

**Dated and delivered at Nairobi this 11<sup>th</sup> 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 15<sup>th</sup> 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**

Secretary General for the Union

O & M Law LLP Advocates for the Respondents

Chrispo: Court Clerk.