



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI

APPEAL NO. 21 OF 2019

BETWEEN

AL HUJURA AGENCY LIMITED..... APPELLANT

VERSUS

DIRECTOR-GENERAL, NATIONAL

EMPLOYMENT AUTHORITY.....RESPONDENT

RULING

1. The Appellant is a duly registered Employment Agency.
2. It was on 3rd April 2019 and 11th April 2019, denied by the Respondent, renewal of certificate.
3. It represented this Appeal pursuant to Section 56 [8] of the Labour Institution Act, No.12 of 2007.
4. The Appeal was successful, as shown in the Judgment of Hon. Justice Byram Ongaya, delivered on 29th May 2020.
5. The orders issued are: -
 - a. Appeal is allowed.
 - b. It is declared that the Appellant is compliant with the statutory requirements for renewal or registration certificate as an employment agency.
 - c. The Respondent is compelled to renew the Appellant's registration certificate.
 - d. As time has since run, the renewed certificate to be issued for 1 year from the date of its issuance in terms of Regulation 5[2] and [3] of the Labour Institutions [Private Employment Agencies] Regulations, 2016.
 - e. The Respondent to pay the Appellant's costs of the Appeal
6. It is common ground that to-date, no certificate of renewal has issued, as directed by the Court above.
7. The Appellant therefore seeks enforcement, and protection of the dignity of the Court and the rule of law, through an Application for contempt of court made against the Respondent, dated 3rd August 2020.
8. The Application is anchored on the Affidavit of Appellant's Director, Susan Wanjohi, sworn on 3rd August 2020.
9. Wanjohi gives a chronology of facts, which as stated above, are undisputed. It is not disputed that both Parties are aware of the Judgment given by the Court. There is no compliance to-date.
10. Edith Okoki, the Respondent herein, explains non-compliance, in her Affidavit sworn on 6th November 2020.

11. She concedes that the Court gave a Judgment in favour of the Appellant on 29th May 2020, compelling her Office to issue the Appellant with a renewal certificate.

12. She states that the Respondent was not satisfied with the Judgment of the Court, and has lodged a Notice of Appeal, and applied for proceedings of the Court, to enable it prepare Record of Appeal.

13. She explains disdainfully, that: “ *The Respondent is ready and willing to comply with the Judgment and Orders of the Court at the earliest, but is unable to do the same, since her hands are tied by the law that requires the Intended Appeal be filed, heard and determined.*”

14. It is incredulously, submitted further that, it would be an abdication of constitutional duty by the Respondent, if the Respondent renews the certificate as ordered, before the hearing and determination of the Appeal. The Application is devoid of merit, as it is based on the Contempt of Court Act, which was declared unconstitutional in ***Nairobi H.C Petition No. 87 of 2017 between Kenya National Human Rights Commission v. The Attorney-General & Another.***

15. Parties agreed in Court on 10th December 2020, to have the Application considered and determined on the strength of their Affidavits and Submissions on record. They confirmed filing of Submissions on 19th February 2021.

The Court Finds: -

16. It is as clear as a pikestaff, that the Respondent is in contempt of court. The Replying Affidavit by Okoki confirms this, and compounds contempt, restating that the Respondent shall not comply, until its Intended Appeal is heard and determined.

17. It is an extremely shocking and bold admission of contempt, coming from a Government Agency, which deposes to be acting on the advice of the Attorney-General of Kenya. In democracies which are alive, the Attorney-General ought to be the custodian of constitutionalism and the rule of law. The Respondent’s behaviour is perhaps informed and encouraged by past contempt of court committed by Government Agencies and Officials, which has either gone unpunished, or inadequately punished, leaving the Courts looking like toothless bulldogs, whose Judgments and Orders are not worth the papers they are written on. The Attorney-General, a prominent and respected Lawyer, who has served the Judiciary as an Appellate Judge, ought to be more assertive in advising the Government to obey decisions of the Court, to avert the drift into chaos and death of the rule of law which the Government appears to have taken. One cannot say that he or she is waiting to be heard on Appeal, before complying with a valid Judgment of a Court, which has neither been reviewed, set aside or stayed.

18. The Court does not think it is correct to submit that because the Contempt of Court Act was repealed, the Application filed herein is deprived of merit.

19. The correct position was stated by the High Court at Kajiado in ***Republic v. Kajiado County & 2 others ex parte Kilimanjaro Safari Club Limited [2019] e-KLR***, where it was held that: in light of the Contempt of Court Act being declared unconstitutional, the Court must revert to the law which governed contempt of court prior to declaration of unconstitutionality; the Court has a responsibility in maintenance of the rule of law, and there can be no gap in the application of the rule of law; in the absence of a means of enforcement of a remedy, the Court is within its right to adopt such a procedure as would effectually give meaningful relief to the aggrieved Party; and that such residual power is aimed at meeting the ends of justice, and avoidance of abuse of the process of Court.

20. The E&LRC would therefore fall back on Articles 159 of the Constitution; and Sections 3, 12 [3] [viii], 13 and 20, of the E&LRC Act, read with English Law on committal for contempt of court under Rule 84.1 of the English Civil Procedure Rules, which deals with breach of Judgments, Order or Undertakings, applicable by virtue of Section 5[1] of the Judicature Act.

21. It is unfortunate that the Appellant has been denied renewal, having persuaded the Trial Court that it had up to 300 job opening in Saudi Arabia; Applicants’ visas were being processed; Applicants had been trained by trainers accredited by the Appellant; the Appellant had incurred costs in processing the visas; it had incurred costs in processing of Applicants’ passports; and had paid a sum of Kshs. 1,068,000 in medical examination fees. Its certificate had previously been renewed from 2014.

22. Okoki realizes that the Appellant has sustained financial loss as a result of non-compliance with the Judgment, suggesting that “*the Appellant can pursue damages since delay in receiving typed proceedings, cannot be attributed to the Respondent.*”

23. The Court is satisfied that the Respondent is in contempt of court.

IT IS ORDERED: -

a. The Respondent is found to be in contempt of court.

b. The Respondent shall personally attend Court for mitigation and sentencing, on a suitable date to be scheduled by the Deputy Registrar of the Court.

DATED, SIGNED AND RELEASED TO THE PARTIES UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, AT CHAKA, NYERI COUNTY, THIS 28TH DAY OF MAY 2021

JAMES RIKA

JUDGE