



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE No. E558 OF 2020

KENYA CONCRETE, STRUCTURAL, CERAMICS,

TILES WOODPLYS AND INTERIOR DESIGN WORKERS UNION.....CLAIMANT

VERSUS

COMPLY INDUSTRIES LIMITED.....RESPONDENT

AND

KENYA BUILDING CONSTRUCTION,

TIMBER AND FURNITURE EMPLOYEES UNION.....INTERESTED PARTY

RULING

1. The claimant/Applicant in its application dated 20th April, 2021, sought orders:-

1. *Spent*

2. *That, leave be granted to the Applicant to commence contempt proceedings and be preferred against Mr. SABJIT SINGH RAI being the Managing Director of the Respondent/Contemnor together with Mr. Nilesh Mehta being the General Manager of the Respondent/Contemnor seeking committal to Civil jail for a term of six months for contempt of Court having deliberately disobeyed orders of this Court issued on 18th November, 2020.*

3. *The contemnors herein and any other office of Comply Industries Limited served with this order be summoned to appear before the Court and/or show cause why they should not be punished for persistent and deliberate contempt of Honourable Court's orders issued on 18th November, 2020.*

3. *The Honourable Court be pleased to punish and commit the contemnors herein and any other officer of the Respondent/Contemnors served with this order, to Civil jail for a period not exceeding six (6) months for willful and deliberate disobedience of the Court orders given herein on 18th November, 2020.*

4. *The contemnors herein be denied audience by this Honourable Court and any other Employment and Labour Relations Court until they purge the Contempt of the Court which has impeded the course of justice.*

5. *Costs of the application.*

2. The application is supported by grounds set out on the face of the Notice of Motion and in the supporting affidavit of **Mr. Dishon Angoya**, the General Secretary of the applicant.

3. The nub of the application is that:-

(i) *That orders dated 18th November, 2020, were granted pursuant to an application dated 21st September, 2020, which came for hearing before Nduma, J. on 18th November, 2020, when Mr. Angoya appeared for the union and Mr. Kilonzo appeared for Mr. Masese for the Respondent.*

5. The applicant deposes that the Court made the following orders:-

(i) *That the Respondent to file a response within 3 days.*

(ii) *That upon hearing of Application interparties, an order be and is hereby granted allowing the claimant/Applicant's application and the main suit dated 21st September, 2020 to proceed undefended.*

(iii) *That the applicant to file submissions within 7 days of service and Respondent to file within 7 days of service.*

(iv) *That mention to confirm compliance on 16th December, 2020.*

6. That going by the orders of 18th November, 2020, and in particular Order No. 2, the following orders immediately ensue from the claimant's application dated 21st September, 2020:-

(i) *Spent*

(ii) *That an order be and is hereby issued directing the Respondent by itself, agents and any of its assigns to immediately remit all the deducted and unremitted union dues from July, 2018 to-date now amounting to Kshs.12,710,050 into the claimant's gazette bank account contained in Legal Notice No. 50 of 2019 dated 8th May, 2014, as prescribed in the Form 'J' duly served upon it from its own funds as provided for under Section 19(6) of the Employment Act, 2007, Laws of Kenya pending the hearing and determination of this Application.*

(iii) *That an order be and is hereby issued directing the Respondent by itself, agents and any assigns to immediately implement the Legal Notice No. 50 of 2014 dated 8th May, 2014 and without any further unnecessary alteration of irregularity pending the hearing and determination of Application and the main suit.*

(iv) *That an order be and is hereby issued restraining the Respondent from any acts of victimization including termination of existing appointments and dismissing any member of the claimant/Applicant on account of this suit pending hearing and determination of this application and the main suit.*

(v) *That an order be and is hereby issued restraining the Respondent from any acts of victimization including termination of existing applicants and dismissing any member of the claimant/Applicant on account of this suit pending hearing and determination of this application and the main suit.*

7. That despite having knowledge of the Court orders subsequent to proper service of the orders, the Respondent/Contemnors herein have deliberately decided not to comply with the orders of the Court hence subjecting the authority of the Court to ridicule.

8. That the defiance by the respondent has prejudiced the members of the applicant. That service of the orders on the Respondent/Contemnors was on 16th November, 2020 as per the sworn Affidavit of Service of M/s Mary Gatavi Njue sworn on 17th November, 2020. That the contemnors became aware of the Court orders on 18th November, 2020.

9. That the application be allowed with costs.

10. The affidavit by Mary Gatavi Njue marked "DA2" states that on 23rd September, 2020, she received an order dated 21st September, 2020 from the union and on 24th September, 2020. She proceeded to Comply Industries Limited offices located at Nakuru and upon arrival at the said offices, "I was received by the Secretary who I introduced myself to and explained the purpose of my visit. That she accepted service by stamping at the forefront of my copies which I refer herewith duly served."

11. The deponent Mary Gatavi attached an order of the Court issued on 18th November, 2020 by Hon. Nduma Nderi, J. extracted and signed by the registrar on 24th November, 2020.

12. The interested party was meanwhile enjoined in the suit and moved the Court by an application dated 30th June, 2021 for orders:-

1. *Spent*

2. *That this Honourable Court be pleased to review and/or clarify its ruling made on the 24th February, 2021.*

3. *Costs*

14. The Court had on 21st February, 2021 made a ruling attached to the application in respect of the application dated 21st September, 2020 which sought an order *inter alia*,

"That this applications and the main suit be merged and proceed by way of documentation as provided under Rule 21 of the Employment and Labour Relation Court Procedure Rules, 2016.

15. The application dated 21st September, 202, is the same applications in terms of which the orders allegedly made on 18th November, 2020 were made by the Court which the applicant wants enforced by these contempt proceedings.

16. The Court had gone further to direct in its ruling dated 24th February, 2021:-

“Accordingly, the Court grants prayer 5 of the applications and makes the following orders:-

(a) Status quo at the work place be maintained on matters raised in this suit pending hearing and determination of the suit.

(b) Parties to conclude filing of pleadings and obtain a mention date for pre-trial proceedings.

(c) Costs in the cause.

17. It is these two applications that are serving before Court for determination.

18. The Claimant/Applicant has responded to the application mainly reiterating the matters raised in the application for contempt of Court be first resolved before any further step is taken in this suit. Parties filed written submissions which the Court has duly considered and proceeds to determine the two application as follows:-

Determination

19. The application dated 20th April, 2021 moves the Court to find the named persons guilty of contempt of Court for being in willful defiance of Court orders attached to the application purportedly issued by this Court on 18th November, 2020 which order is attached to the application.

20. The Court has carefully perused the record of the Court in this matter. On 18/11/2020, Mr. Angoya appeared before Nduma, J. for the Claimant/Applicant and Mr. Kilonzo appeared for Mr. Masese for the Respondent.

21. Mr. Angoya told the Court on that day that Application dated 21/9/2020 was for hearing. That the interested party was absent though they were served. Mr. Kilonzo for the respondent told the Court that they had not yet filed a replying affidavit to the application since they were served on 16th October, 2020. They requested 3 days to file a reply.

22. Mr. Angoya objected to the applications for adjournment stating that the respondent had enough time to reply to the application and sought to be granted prayers 2, 3 and 4 in the applications and proceed to file submissions with regard to Order No. 5.

23. The Court proceeded to make the following order on 18th November, 2020:-

“The respondent to file a response within 3 days. Order 4 in the Notice of Motion dated 25th September, 2020 is granted. The Applicant to file submissions within 7 days of service and Respondent to file within 7 days of service. Mention to confirm compliance on 16th December, 2020.

24. From the record of the Court, it is very clear that the Court did not on 18th November, 2020 issue purported orders in respect of the application dated 21st September, 2020.

25. *Prayer 4 which was granted by Court on that day reads:-*

“That an order be and is hereby issued restraining the Respondent from any act of victimization including termination of existing appointments and dismissing any member of the claimant/Applicant on account of this suit pending hearing and determination of this application and the main suit.”

26. The application dated 20th April, 2020 is therefore defective for attaching a non-existent Court order purportedly issued by Nduma, J. on 18th November, 2020.

27. Furthermore, an erroneous Affidavit of service of Mary Gatavi Njue, sworn to on 28th September, 2020 is attached to the applications as evidence of service of an order purportedly issued more than a month later on 18th November, 2020 by the Court.

28. The application is based on erroneous facts and the Court declines in the first instance to grant leave to the applicant sought in prayer 2 of the applications to commence contempt proceedings against the named contemnors. The application dated 20th April, 2021 lacks merit and is dismissed.

29. With regard to the application dated 30th June, 2021 by the interested party which seeks clarification of the ruling of the Court made on 24th February, 2021, the Court is satisfied that its ruling is clear and speaks for itself. An order of the Court dated 24th February, 2021 was extracted from the said ruling and clearly states that *status quo* at the work place be maintained on matters raised in this suit pending the hearing and determination of the suit. By *status quo* is meant that the issues of representation and payment of union dues as between the

claimant union, the Respondent and interested party have not yet been resolved and must await resolution upon hearing of the suit on the merits. These are factual issues that cannot be resolved by way of interim orders. It could not have been the intention of the Court to pre-determine contentious issues of fact in this matter without hearing the parties.

31. The parties proceed to obtain a mention date for pre-trial to take place before a hearing date of the main suit is granted by the Court as was clearly stated by the Court in its ruling of 24th February, 2021. Costs in the cause.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 16TH DAY OF DECEMBER, 2021

MATHEWS N. NDUM A

JUDGE

Appearance

Angoya for the claimant/union

Mr. Masese for Respondent

Ms Chege for interested party.

Ekale – Court Assistant