



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NYERI**

**CAUSE NO. 31 OF 2019**

**JAMES MUNGAI MUHIA.....CLAIMANT/APPLICANT**

**VERSUS**

**KENYA NATIONAL UNION OF TEACHERS.....1<sup>ST</sup> RESPONDENT**

**JOSEPH BII, CHAIRMAN, KNUT NAKURU BRANCH.....2<sup>ND</sup> RESPONDENT**

**BRANCH EXECUTIVE COMMITTEE KNUT NAKURU BRANCH.....3<sup>RD</sup> RESPONDENT**

**WILSON SOSSION & JOSEPH BII.....ALLEGED CONTEMNORS**

**RULING**

1. The Claimant/Applicant's notice of motion dated 5<sup>th</sup> November 2019 is what is before the court for determination. The application is supported by the Claimant/Applicant's affidavit sworn on 5<sup>th</sup> November 2019. The motion seeks the finding that the Respondents and the named alleged contemnors Wilson Sossion & Joseph Bii are in contravention of court orders. The motion is to the effect that the court's dignity and authority is under threat by the Respondents and two named alleged contemnors as they have declined to comply even when they have been given an opportunity to comply. The Respondents filed a replying affidavit and a supplementary affidavit sworn by Joseph K. Bii the branch secretary KNUT Nakuru Branch and one of the named alleged contemnors. In his affidavits the Branch Secretary deposes that there are no outstanding dues and that the Claimant/Applicant does not know what dues he is claiming from the Respondents. He deposed that he and Wilson Sossion are not parties to the suit in their personal capacity and that further Wilson Sossion was not a party to the suit.

2. The motion was urged and opposed orally in court with arguments taking the shape of the claim above. The parties also filed lists of authorities in support of their respective cases. The Claimant/Applicant submitted that a party who knows of an order whether null or valid, regular or irregular cannot be permitted to disobey it. The Claimant/Applicant cited the case of **Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR** which cited the case of **Hadkinson v Hadkinson [1952] ALL ER 567** with approval. He argued that as long as a court order exists it must not be disobeyed. The Claimant/Applicant relied on the case of **Teachers Service Commission v Kenya National Union of Teachers & 2 Others [2013] eKLR** where Ndolo J. observed that *the reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law.* The Claimant/Applicant further relied on the case of **Econet Wireless Kenya Limited v Minister for Information & Communication of Kenya & Another [2005] eKLR** where it was held that a contemnor would not have any right of audience in any court of law unless he is punished or purges the contempt.

3. The Respondents in their defence cited the case of **Kasturi Limited v Kapurchand Depar Shah [2016] eKLR** where it was held to prove contempt there must be clear terms of the order which are unambiguous, that the defendant had knowledge of or proper notice of the terms of the order and that the defendant has acted in breach of the order and the conduct was deliberate. The Respondents assert that the orders issued by this court and the Court of Appeal have been complied with. They argue that all allowances and emoluments be reinstated including insurance cover and that this had been done. The Respondents assert that the only issue that may be unresolved is what is due. On the emoluments such as the executive allowance the Respondents assert there has been an embargo on allowances and that it was dishonest of the Claimant/Applicant to seek the colossal sums which were suspended. The Respondents submitted that the court orders did not suspend disciplinary action against the Claimant/Applicant and that there were sums misappropriated and cheques in the custody of the Claimant/Applicant which led to the suspension. The Respondents assert that the parties to the contempt application should be restricted to the parties in the suit and cited the case of **Sam Nyamweya & 3 Others v Kenya Premier League Limited & 2 Others [2015] eKLR** in support. The Respondents urged the dismissal of the motion.

4. In a brief reply, counsel for the Claimant/Applicant argued that the Respondents assertions that payment have been made have not been backed by any bank statements. On the cited parties, the Claimant/Applicant's lawyer argued that the proper parties had been cited as Joseph Bii was the chair of the meeting that altered the emoluments due to the Claimant and that the KNUT Secretary is the only person who can say payments have not come through to a branch. The Claimant/Applicant submitted that a party has no option but to comply with court orders.

5. The Respondents are accused of contempt of court and 2 alleged contemnors named being Wilson Sossion and Joseph Bii. Whereas Joseph Bii is sued as the 2<sup>nd</sup> Respondent, he is sued as Chairman, KNUT Nakuru Branch. He is not sued in his own individual capacity. Wilson Sossion is not a party to the suit. That said, the law of contempt of court requires that there be knowledge of the orders. Against Wilson Sossion such a finding cannot be made as he is neither a party nor is he directed by the Court to do anything in this suit. The Respondents were ordered to pay the Claimant/Applicant his emoluments as per the Court of Appeal order in Civil Appeal No. 5 of 2019 made on 29<sup>th</sup> April 2019. That order subsists and must be complied with as willful failure to obey it amounts to contempt of court. As stated

in the case of **Hadkinson v Hadkinson [1952] ALL ER 567** per Denning L.J.(as he then was) *The fact that a party to a cause had disobeyed an order of the court was not of itself a bar to his being heard, but if his disobedience was such that, so long as it continued, it impeded the course of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it might make, then the court might in its discretion refuse to hear him until the impediment was removed. The present case was a good example of a case where the disobedience of the party impeded the course of justice.* In this case it is apparent that the 3 Respondents have convoluted the matters that were before court and failed to comply by deceitful conduct of withdrawal of emoluments ordered to be paid by the Court of Appeal and in orders made by this Court. In the premises I find the 3 Respondents in contempt of Court and order that each pays a fine of Kshs. 100,000/- within 14 days of the decision herein. Failure to pay the fine shall be punished with imprisonment of the officials concerned for 1 month in default of the payment of the fine. The court orders on payment of emoluments be complied with and a statement be filed by the Respondents within 30 days showing the payments made in compliance with the order to pay emoluments.

6. This decision was rendered online in keeping with the express consent by parties to the waiver of Order 21 Rule 1 and 3 of the Civil Procedure Rules and in line with the Chief Justice's Practice Directions to Mitigate COVID-19 dated 16<sup>th</sup> March 2020 and the Kenya Gazette Notice 2357 of 20<sup>th</sup> March 2020 issued in Vol. CXXII No. 50. In line with the Practice Directions of the Chief Justice and the statement he made in the NCAJ address to the Nation of Kenya when the Judiciary and the other stakeholders in the administration of justice agreed to scale down operations to mitigate the effects of COVID-19, execution of the judgment is automatically stayed for 14 days. In other words the contemnors have 28 days to pay the fine and a further 14 days to comply with the second order made herein.

It is so ordered.

**Dated and delivered at Nyeri this 6<sup>th</sup> day of April 2020**

**Nzioki wa Makau**

**JUDGE**