



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 337 OF 2017

STEPHEN MUNENE NJAGI.....CLAIMANT

VERSUS

THARAKA NITHI COUNTY GOVERNMENT.....RESPONDENT

CONSOLIDATED WITH

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 342 OF 2017

JOSEPH MARANGU SHEM.....CLAIMANT

VERSUS

THARAKA NITHI COUNTY GOVERNMENT.....RESPONDENT

RULING

1. The Respondent filed and urged a preliminary objection against the Claimants/Applicants' notice of motion application dated 17th February 2020 which sought to punish the Respondent for alleged contempt of court. The gravamen of the preliminary objection is that this Honourable Court has no jurisdiction to entertain the motion as the cited Contempt of Court Act was invalidated by this Honourable Court in **Kenya Human Rights Commission v Attorney General & Another [2018] eKLR** and as held in **Owners of the Motor Vessel Lillian S v Caltex Oil Kenya Ltd [1989] KLR 1** where a court lacks jurisdiction, it must down its tools.

2. The preliminary objection was argued by Mr. Munyi for the Respondent while Miss Wangechi resisted the preliminary objection on behalf of the Claimants. Mr. Munyi argued that the court lacked jurisdiction since the Contempt of Court Act upon which the applications being challenged were premised, was struck off by the High Court in **Kenya Human Rights Commission v Attorney General & Another (supra)** on 9th November 2018. Counsel argued that the motion was non-existent as there was no such Act. He argued that Odunga J. in the case **Republic v Principal Secretary, Ministry of Defence ex parte George Kariuki Waithaka [2018] eKLR** gave steps parties seeking to cite for contempt of court ought to follow. He submitted that the applicants had cited Section 63(2) of the Civil Procedure Act which was on interlocutory relief. He argued that the contempt orders sought are final and therefore the Claimants cannot rely on this Section. He urged the motions be struck out with costs.

3. Miss Wangechi opposed the dismissal and argued that the applications were filed under certificate of urgency following judgment of the court delivered on 8th December 2019. She submitted that in regard to the preliminary objection filed, there were observations made on the invalidation of the Contempt of Court Act that a Court has a duty to safeguard the dignity of the Court. She argued that the contempt of court proceedings are usually brought due to the blatant disregard to judicial authority and its order. She argued that if the application subject of the preliminary objection is struck off it will put the Claimants in a very unfavourable position. She submitted that on the strength of the decision in **Christine Wangari Gachoge v Wanjiru Evans & 11 Others [2014] eKLR** which was cited in the case of **Republic v Principal Secretary, Ministry of Defence ex parte George Kariuki Waithaka [2019] eKLR** stated that where there is lacunae Section 3A of the Civil Procedure Act gives court the authority and inherent right to give orders that meet the ends of justice. She urged the preliminary objection be dismissed and application by the Claimant be allowed as detailed by his supporting affidavit of the blatant disobedience of court

orders by the County Secretary as the Claimant continues to suffer to date.

4. In a brief reply Mr. Munyori submitted that the Claimants application cannot be determined at this stage as we have to deal with the preliminary objection. He argued that Article 159 of the Constitution does not give parties the leeway to avoid court procedure and he thus urged the preliminary objection to be allowed.

5. It is not in doubt that the High Court in the case of **Kenya Human Rights Commission v Attorney General & Another** (*supra*) declared the entire Contempt of Court Act invalid for lack of public participation as required by Articles 10 and 118(b) of the Constitution of Kenya and for encroaching on the independence of the Judiciary on 9th November 2018. The Application dated 17th February 2020 cited the Contempt of Court Act. In as far as that is the law relied on in the motion, the preliminary objection is well founded as the law cited is a nullity, it simply does not exist in our statute books having been declared unconstitutional and invalid. Basing any action on an invalid act is futility as there is no basis for the motion. In that regard the motion dated 17th February 2020 seeking various reliefs for the Claimants is struck off with no order as to costs.

6. This decision was rendered online with 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 16th March 2020 and the Kenya Gazette Notice 2357 of 20th March 2020 issued in Vol. CXXII No. 50. In line with the Practice Directions of the Chief Justice and 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.

It is so ordered.

Dated and delivered at Nyeri this 11th day of May 2020

Nzioki wa Makau

JUDGE