



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO 1226 OF 2017**

**PHILIP MBINDA.....1<sup>ST</sup> CLAIMANT**  
**DIVONNE OWUOR.....2<sup>ND</sup> CLAIMANT**  
**ALBERT TUNGANI.....3<sup>RD</sup> CLAIMANT**  
**DANIEL KYALO.....4<sup>TH</sup> CLAIMANT**  
**DENNIS MUMO.....5<sup>TH</sup> CLAIMANT**

**VERSUS**

**BRAVA FOOD INDUSTRIES.....RESPONDENT**

**RULING**

1. The application dated 6<sup>th</sup> July, 2017 sought orders among others that:

*That the Honourable Court cites the following persons for being in Contempt of a Court Order.*

- a. *Mr. Solomon Nzano, The General Manager, Brava Food Industries Ltd.*
- b. *Mr. Hussein Barkadle, The Executive Director, Brava Food Industries Ltd.*
- c. *Mr. Bashir Maxamud, The Chairman, Brava Food Industries Ltd.*
- d. *Mrs. Ursula Kevogo, The Human Resource Director, Brava Food Industries Ltd.*

*That an order of committal to prison be made against:-*

- a. *Mr. Solomon Nzano, The General Manager, Brava Food Industries Ltd.*
- b. *Mr. Hussein Barkadle, The Executive Director, Brava Food Industries Ltd.*
- c. *Mr. Bashir Maxamud, The Chairman, Brava Food Industries Ltd.*
- d. *Mrs. Ursula Kevogo, The Human Resource Director, Brava Food Industries Ltd.*

*for such period as this Honourable Court may deem fit and just in that they have blatantly disobeyed the express Orders made herein by this Honourable Court on the 30<sup>th</sup> day of June, 2017 directing the Respondent not to victimize, threaten or in any way interfere with the Applicants' employment pending the hearing and determination of this suit.*

2. The application was based on grounds inter alia that:

*a. This Honourable Court issued Orders on the 30<sup>th</sup> day of June, 2017 directing the Respondent not to victimize, threaten or in any way interfere with the Applicants' employment pending the hearing and determination of this suit.*

*b. The said Orders together with a Penal Notice were served upon the Respondents mentioned herein above on the 30<sup>th</sup> day of June, 2017.*

*c. That the said Mr. Solomon Nzano, Mr. Hussein Barkadle, Mr. Bashir Maxamud and Mrs. Ursula Kevogo have since blatantly refused to obey the said Orders thereby issuing emails to the Applicant forcing them to sign the Employment contract Addendum against the clear instructions of this Honourable Court.*

*d. The Respondent has subsequent to service, ordered the return of vehicles that the respondents and those working under them use in their marketing duties.*

3. The application was further supported by the affidavit of Philip Mbinda who deponed on the main that:

*a. That this Honourable Court issued Orders on the 30<sup>th</sup> day of June, 2017 2017 directing the Respondent not to victimize, threaten or in any way interfere with the Applicants' employment pending the hearing and determination of this suit.*

*b. That the said Orders were duly served upon the Respondent on the 30<sup>th</sup> day of June, 2017.*

*c. That on or about 13<sup>th</sup> June, 2017, the Respondent wrote an email to each of the Applicants forcing us to sign the employment contract addendum.*

*d. That the Respondent, directly opted to disregard the said order and is coercing us into signing the Employment contract Addendums failure to which they threaten dire consequences upon us.*

*e. That the Respondent has also ordered the return of vehicles that the Applicants and those working under them use in their marketing duties effectively frustrating our employment and constructively terminating the same.*

*f. That the Respondent has up to date refused, neglected and/or ignored to pay us our salaries.*

4. The alleged contemnors each filed a Replying Affidavit in which they deponed in common that:

*a. That I was never served with the Court Order of 30<sup>th</sup> June, 2017 and neither was the company served with the said court order as alleged or at all. I and the Company directors only became aware of the existence of the court order of 30<sup>th</sup> June, 2017 on 7<sup>th</sup> July, 2017 when the Claimant's Advocates addressed the letter dated 7<sup>th</sup> July, 2017 and served on the company's offices.*

*b. That the Respondent herein instructed the Firm of Hassan N. Lakicha & Co Advocates to confirm the court order and upon confirmation of the said order, we have been advised to comply with the said order and as such I have never disobeyed this honourbale court's order.*

*c. That contrary to the allegation of the Applicants, the Respondent had paid the salary of the*

*Applicants on 7<sup>th</sup> July, 2017, which is the normal paying period of the company which is between 5<sup>th</sup> and 10<sup>th</sup> of each month.*

*d. That the motor vehicles were only recalled for Car Security Tools enhancement.*

*e. That I have never disobeyed any court order issued upon me as I am a law abiding person and respect the judicial authority of the court and have never breached any such order of the court as alleged or at all.*

5. In closing submissions in support of the application Mr Okatch submitted among others that the actions by the alleged contemnors fell nothing short of contempt of court orders. The respondent through its officials proceeded to disregard the court order by terminating the claimants' employment, sending them email informing them of reduction in their salaries and threatening the claimants to sign the employment contract addendums or face dire consequences. These actions by the respondent's officials could be regarded as contempt of court Counsel submitted. Counsel relied on **Econet Wireless Kenya Ltd Vs Minister for Information & Communications of Kenya & Another [2005] eKLR** where the court stated that it was essential for the maintenance of the rule of law and order that the authority and dignity of the court be upheld at all times. The terms of the court order were clear, the respondent had knowledge of the order but through its officials acted in breach of the terms of the order and that their conduct was deliberate.

6. The respondent on its part submitted that personal service had to be effected upon the contemnor to ensure that the actions they do will constitute contempt. In this particular case service by the claimants was not properly effected to all directors and persons now cited for contempt.

7. According to counsel, there was speculation over service on the respondent. The process server Mr Tobias Olum was unsure of the gender of the secretary of the respondent he served due to the fact that he mentions Riak as a "she" then proceeds to mention the same as a "he" in the next paragraph. This therefore brought to question whether the deponent visited the respondent's offices.

8. Second the affidavit of service dated 6<sup>th</sup> July, 2017 claimed that upon service on the Secretary the service copy was not stamped as all legal documents were to be signed and stamped by the Director of the company. This showed that personal service was not effected on the persons in question who were regarded as in contempt.

9. In an application for contempt of court, the applicant must sufficiently demonstrate that reasonable notice was brought to the attention of the alleged contemnor either through personal service or reasonable means that would render doubtful if the alleged contemnor did not have notice of the order allegedly disobeyed.

10. The process server in this matter in the affidavit of service filed on 1<sup>st</sup> September, 2017 stated that on 30<sup>th</sup> June, 2017 at around 4 pm he met the respondent's secretary who introduced herself as Miss Riak and after explaining the purpose of his visit and inquiring the whereabouts of the director, he was told he had gone for prayers at Jamia Mosque and was yet to come back and the secretary did not know when he would be back. The process server therefore served the documents including the order on the Secretary requiring her signature at the back. She accepted but declined to stamp saying that the director was the person authorized to stamp and that the stamps were in his office.

11. The suit papers as well as the court order was allegedly left with the secretary. The process server or counsel did not make a follow up either by a visit or letter to assert the existence of a court order and demand obedience thereof.

12. In the application before me, Mr Philip Mbinda in the affidavit in support of the application states that on 13<sup>th</sup> June, 2017 the respondent wrote an email to each of the applicants forcing them to sign the revised employment contract or face dire consequences. The respondent also ordered the return of

company vehicles hence constructively terminating their service.

13. The suit herein was filed on 30<sup>th</sup> June, 2017 and the order of the court issued ex-parte on the same day. It would therefore be not correct to claim the respondents were in contempt of the court order when it issued the email on 13<sup>th</sup> June, 2017 since this was done prior to the court order. Further, the respondent in their replying affidavit has stated that the claimant's salary were paid on 7<sup>th</sup> July, 2017 which was within the normal paying period of the respondent. The payment was on the basis of the revised salaries but the claimant's all the same accepted the payment in spite of the fact that they had filed the present application on 6<sup>th</sup> July, 2017.

14. The contempt jurisdiction of the court is quasi-criminal. Ensuing orders may have the effect of curtailing a citizen's liberty or loss of property. In that regard, the order ought to issue in plain and obvious cases and where no other reasonable order or directions by the court can ensure compliance. The application before the court is not quite precise on the nature of the contempt the respondents are being accused of. First the email of 13<sup>th</sup> June, 2017 cannot amount to contempt because the same was issued before the order of the court alleged to have been disobeyed. The salary payment was received by the claimant's despite what they considered was a court order restraining the respondent from implementing the revised salary structure.

15. The court's view therefore is that the infractions complained of did not meet the threshold for a contempt of court order. They could be remedied by other means such as showcause or demand before action. Before the court there was no evidence that the alleged contemnors were warned through a demand before action or a show cause was issued upon them why they should not be cited for contempt. This was more so bearing in mind that there was no clear evidence that they were personally served or the existence of the order of the court was reasonably brought to their attention and they ignored it.

16. In conclusion, the court disallows the application as lacking on merit.

17. It is so ordered.

**Dated at Nairobi this 6<sup>th</sup> day of May, 2020**

**Abuodha Jorum Nelson**

**Judge**

**Delivered this 6<sup>th</sup> day of May, 2020**

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

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