



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**PETITION NO. 46 OF 2020**

**(Application dated 8<sup>th</sup> April, 2020)**

**(Before Hon. Justice Hellen S. Wasilwa on 16<sup>th</sup> July, 2020)**

**RICHARD KIPKOECH AIYABE.....PETITIONER/APPLICANT**

**VERSUS**

**AGRICULTURAL DEVELOPMENT CORPORATION.....RESPONDENT**

**MOHAMMED BULLE.....1<sup>ST</sup> CONTEMNOR**

**HON. BENJAMIN CHEBOL.....2<sup>ND</sup> CONTEMNOR**

**HON. JOHN O. K'OBADO.....3<sup>RD</sup> CONTEMNOR**

**HON. HASSAN OSMAN.....4<sup>TH</sup> CONTEMNOR**

**HON. MARTIN OGINDO.....5<sup>TH</sup> CONTEMNOR**

**DR. GLADYS K. NGAO.....6<sup>TH</sup> CONTEMNOR**

**MRS. TABITHA M. MAUGI.....7<sup>TH</sup> CONTEMNOR**

**MS. JEAN NJIRU.....8<sup>TH</sup> CONTEMNOR**

**HON. PAUL K. CHEBOR.....9<sup>TH</sup> CONTEMNOR**

**HON. ROBA SHARU DUBA.....10<sup>TH</sup> CONTEMNOR**

**HON. PETER CHEMUIGUT.....11<sup>TH</sup> CONTEMNOR**

**MRS. ELIZABETH SHUNGULA.....12<sup>TH</sup> CONTEMNOR**

**MR. KELLO HARSAME.....13<sup>TH</sup> CONTEMNOR**

**DR. GEOFFREY MUTAI.....14<sup>TH</sup> CONTEMNOR**

**CHRISLOGUS MUTAI.....15<sup>TH</sup> CONTEMNOR**

**MS. LILIAN KOSKEI.....16<sup>TH</sup> CONTEMNOR**

**RULING**

1. Before this Court is the Petitioner's Application dated 8/4/2020 seeking the following orders:-

a) *Spent.*

b) *A break-in order and change of the locks at the physical office of the Applicant do issue.*

c) *The 1<sup>st</sup> to 16<sup>th</sup> Contemnors herein be punished for contempt of court by way of committal to civil jail for a period of 6 months without an option of a fine for disobeying the court orders issued on 31/3/2020.*

d) *The Officer Commanding Central Police Division Nairobi to ensure compliance of the Order No. 2 above and maintain peace in the premises of the Respondent.*

e) *Costs of this application be provided for.*

2. The Application has been supported by the grounds set out therein and the Applicant's Supporting Affidavit sworn on 8/4/2020 and his Supplementary Affidavit sworn on 24/4/2020.

3. The Contemnors have opposed the Application vide the 1<sup>st</sup> Contemnors Replying Affidavit sworn on 24/4/2020 on behalf of all the Contemnors and his Notice of Preliminary Objection dated 2/6/2020.

### **The Applicant's Case**

4. The Applicant avers that he obtained orders from this Court on 31/3/2020 restraining the Respondent, their servants or agents from interfering with the peaceful performance of the Applicant's duties as the managing director per his terms and conditions of employment.

5. The Applicant avers that he effected service of the orders upon the Respondent, the Principal Secretary of State Department of Livestock, Mr. Harry Kimutai and the Principal Secretary of State Department of Crop Development, Prof. Boga; in compliance with the directions issued on 15/4/2020. The same were received and a stamp affixed on the Applicant's copy.

6. It is averred that the Applicant reported to work on 7/4/2020 and was informed that the 1<sup>st</sup> Contemnor was in acting capacity, had change the office locks and was the only one who could open them.

7. The Applicant avers that he has been unable to access his office which access has been denied by the 1<sup>st</sup> to 17<sup>th</sup> (sic) Contemnors under the instructions of the 2<sup>nd</sup> to 16<sup>th</sup> Contemnors, causing him to work from home and which has hindered the effective discharge of his duties. He avers that attempts to get his office opened bore no fruits.

8. It is averred that the contemnors have acted in total violation of the orders of 31/3/2020 whose existence they were aware of. Finally, he avers that his application is meritorious and should be granted as prayed.

9. The 1<sup>st</sup> to 16<sup>th</sup> Contemnors have been outlined as: Mohammed Bulle, Hon. Benjamin Cheboi, Hon. John O K'Obado, Hon. Hassan Osman, Hon. Martin Ogindo, Dr. Gladys K. Ngao, Mrs. Tabitha M. Maugi, Ms. Jean Njiru, Hon. Paul K. Chebor, Hon. Roba Sharu Duba, Hon. Peter Chemuigut, Mrs. Elizabeth Shungula, Mr. Kello Harsame, Dr. Geoffrey Mutai, Chrislogus Makokha and Ms. Lilian Koskei respectively.

### **The Contemnors' Case**

10. The 1<sup>st</sup> Contemnor avers that the Applicant misled and misdirected this Honourable Court into issuing *ex parte* orders in his failure to reveal that his employment contract had lapsed and was never renewed.

11. He denies the allegations of continuous harassment against the Applicant and contends that the same are false and have been made in bad faith, instead, he avers that the Applicant moved to court in a bid to have his contract term extended.

12. The 1<sup>st</sup> Contemnor denies receiving any documents relating to the present suit and contends that the Applicant is making false accusations actuated by malice aimed at getting him committed to civil jail to guarantee him a free reign to the Respondent's offices.

13. He avers that most of the Contemnors have been working from home due to the current COVID-19 pandemic hence were not served with the impugned orders. It is therefore his position that none of the Contemnors have ever been served with the impugned orders.

14. He admits that the Applicant came to the Respondent's offices with several police officers but contends that he never stated the purpose of his visit.

15. It is the 1<sup>st</sup> Contemnor's contention that the locks of the Applicant's office which he currently occupies, have never been changed and avers that on 7/4/2020 he was away on official duty when the Applicant came to the Respondent's offices.

16. He posits that there is no evidence of their disobedience to court orders before this Court as the Applicant has failed to prove service of the orders upon them, that they had no personal knowledge and existence of the orders or that they disobeyed them wilfully and blatantly. As

such, the Application is incompetent, scandalous, vexatious, frivolous, misconceived, actuated in bad faith with the aim of validating a wrongful and illegal act hence an abuse of the court process.

17. The Affiant avers that the Contemnors stand to suffer a substantial loss and prejudice if the orders sought are not set aside or vacated on the basis of material misrepresentation and non-disclosure of facts. Thus, he prays that the Application be dismissed with costs to the Respondent.

18. In his Notice of Preliminary Objection dated 2/6/2020, the 1<sup>st</sup> Contemnor urges this Court to strike out the Application on the ground that the orders sought are incapable of enforcement or implementation.

19. I have examined the averments of the Parties herein and the submissions filed.

20. The Applicant seeks committal of the alleged Contemnors for contempt for disobeying this Court's order issued on the 1<sup>st</sup> April 2020. Incidentally, there are no orders issued by Court on 1/4/2020 but the orders being referred to were issued by this Court on 31/3/2020.

21. The orders under reference read as follows:-

**1. "That this application be and is hereby certified as very urgent and heard ex parte.**

**2. That a temporary injunction is hereby issued against the Respondent by itself, servants and agents, restraining it from interfering with the peaceful performance of the Applicant's duties as the Managing Director of the Respondent, in accordance with the Petitioner/Applicant's terms and conditions of his employment pending the hearing and determination of this application.**

**3. That the application be served upon the Respondent and be mentioned on the 15<sup>th</sup> day of April, 2020 for further directions.**

22. The Contemnors aver that they have not been in disobedience of the orders in question. 2<sup>nd</sup> to 16<sup>th</sup> alleged Contemnors aver that they were never served with the orders in question as they have been working from home due to the ongoing Covid-19 Pandemic.

23. The 1<sup>st</sup> Contemnor on his part avers that the orders issued by Court were incapable of being implemented. He contends that the Applicant approached Court to have his contract term extended the same having expired.

24. The 1<sup>st</sup> Contemnor also admits that the Applicant came to the Respondent's offices with several police officers but never stated his purpose.

25. He contends that the locks to the office currently occupied by the 1<sup>st</sup> Contemnor were never changed. He contends that there is no evidence of disobedience to the Court orders before Court.

26. I will consider 1<sup>st</sup> issue of 2<sup>nd</sup> to 16<sup>th</sup> Contemnors. They have averred that they have been working from home since the Pandemic and have never been served with the orders of this Court.

27. Indeed the Applicant did not exhibit before Court any evidence of service of the orders of the Court upon the 2<sup>nd</sup> to 16<sup>th</sup> Contemnors. For this reason, I find the 2<sup>nd</sup> to 16<sup>th</sup> Contemnors not guilty as cited.

28. Now as concerns the 1<sup>st</sup> Contemnor, he is the current Acting Managing Director of the Respondent. From his pleadings, he stated that the Applicant came to the Respondent's office with several police officers but never stated the purpose. He also avers that he was never served with the order in question.

29. I have looked at the Return of Service (ROS) filed before Court. From the averments therein, the 1<sup>st</sup> Contemnor does not seem to have been served in person. The Respondent was the party served. The 1<sup>st</sup> Contemnor being the Acting Managing Director of the Respondent, he was aware of the orders issued by the Court which he continues to flout.

30. In that case, I find 1<sup>st</sup> Contemnor to be in contempt of Court in his capacity as Acting Managing Director of Respondent and should therefore be punished accordingly.

31. Costs in the cause.

Dated and delivered in Chambers via zoom this **16<sup>th</sup> day of July, 2020.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Njagi for Respondent and 2<sup>nd</sup> to 16<sup>th</sup> Contemnors – Present

Mogire for 1<sup>st</sup> Contemnor

Anyoka for Petitioner/Applicant – Present