



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE 1515 OF 2017

(Before Hon. Justice Hellen S. Wasilwa on 9th July, 2020)

HENRY OWINO OBONYO.....1ST CLAIMANT

ALLOICE ODHIAMBO LUMUTU.....2ND CLAIMANT

VERSUS

KENYA AIRWAYS LIMITED.....RESPONDENT

RULING

1. Before this Court is the Claimants' application dated 24th February 2020 seeking the following orders–

a. *THAT the Respondent herein be cited for contempt of Court.*

b. *THAT the Honourable Court be pleased to commit the Group Managing Director and Chief Executive Officer of the Respondent to civil jail for disobedience and non-compliance of the judgment of this Honourable Court delivered on 9/10/2019 on such terms as the Honourable Court shall deem just and appropriate.*

c. *THAT this Honourable Court do make such further or other orders and issue such directions as will expeditiously ensure that the Claimants enjoy the fruits of the judgment.*

d. *THAT the said orders to be enforced by the Officer Commanding Embakasi Police Station.*

e. *THAT costs of this application be provided for by the Respondent.*

2. The application is based on the grounds set out in the motion and the 1st Claimant's supporting affidavit. The Respondent has opposed the application vide the Replying Affidavit of Melissa Makokha sworn on 12th March 2020.

The Applicant's Case

3. The Applicants aver that pursuant to judgment delivered on 9/10/2019, the Respondent was granted conditional stay on 16/12/2019 provided they paid half of the decretal sum and the other half deposited in an interest earning account within 60 days, failure to which execution would issue.

4. However, the 60 days lapsed without the Respondent's compliance thus they are in contempt for willfully disobeying the judgment of this Court. Consequently, the Managing Director and the Chief Executive Officer should be committed to civil jail.

5. It is averred that the Respondent should pay the entire decretal sum of Kshs. 3, 610,131.20 and Kshs. 27,508,525.20 to the 1st and 2nd Applicants respectively.

The Respondent's Case

6. The Respondent contends that they have filed an application for review, which might have a bearing on the judgment, ruling and the orders for stay hence the compliance to the conditional orders pertinent to the grant of the stay orders should be halted until the review application is heard.

7. The Respondent contends that this application lacks foundation as it is based on a conditional order. Further, the individuals to be cited for contempt are not parties to this suit. It is averred that the Managing Director who was in office when the orders were issued ceased working with the Respondent on 31/12/2019.

8. It is further contended that the Managing Director and Chief Executive Officer was not served with the contempt application, the Court order did not contain a penal notice, neither has it been demonstrated that he had knowledge of the order.

9. The application was disposed of by way of written submissions with both parties filing their submissions.

The Applicants' Submissions

10. The Applicants submit that this Court should grant the orders sought as the Respondent was aware of the judgment having been served in person and through their advocates, and has not made any attempt to comply as they refused to co-operate in opening a joint interest earning account.

11. Further, the Applicants contend that personal service is no longer a requirement for contempt of Court proceedings and a party's knowledge of the existence of a Court order is sufficient. They submit that the knowledge by the Respondent's advocates was adequate and rely on the cases of **Shimmers Plaza Limited vs. National Bank of Kenya Limited [2015] eKLR** and **Justus Kariuki Mate & Another vs. Marin Nyaga Wambora & Another [2014] eKLR**.

12. They submit that the office of the Managing Director and Chief Executive Officer has been cited for contempt as contempt orders against a legal person can only be enforced against a natural person and since he is in charge for making payments, he is liable for contempt. It is their position that the office is perpetual and whoever serves in it takes responsibility that comes with it.

13. The Applicants further submit that by filing an appeal, the Respondent demonstrably showed that they had knowledge of the judgment. The requirement of personal service was unnecessary as held in the case of **Basil Criticos vs. Attorney General & 8 Others & 4 Other [2012] eKLR**. Similarly, they contend that the requirement for a penal notice is no longer necessary as held in **Shimmers Plaza Limited vs. National Bank of Kenya Limited [Supra]**.

14. The Applicants are of the position that the Respondent should be cited for contempt so as to ensure that the rule of law and administration of justice is upheld. They submit that all the conditions precedent to granting contempt of Court orders have been satisfied.

The Respondent's Submissions

15. The Respondent reiterates the averments made in their reply and further submits that the application is premature, incompetent and improper, and that the Claimants have not followed the provisions that precede an application for committal in terms of Section 5 (2) of the Judicature Act.

16. The Respondent has relied on the cases of **Shimmers Plaza Limited vs. National Bank of Kenya Limited [2015] eKLR**, **Payless Car Hire and Tours Limited vs. Imperial Bank Limited [2012] eKLR**, **Nyamogo & Another vs. Kenya Posts and Telecommunications [1999-1994] EA at 464**, **Christine Wangari Chege vs. Elizabeth Wanjiru Evans & 11 Others [2014] eKLR** and **Kenya Reinsurance Corporation Limited vs. Eunice Mbogo [2019] eKLR**, which outline the conditions precedent to citing someone for contempt, to fortify their case.

17. I have considered the averments of the Parties herein. I notice that the person cited for contempt herein is the Managing Director and Chief Executive Officer of the Respondent herein.

18. The Respondents have averred that the alleged contemnor is not a party to this suit. Indeed the alleged contemnor is not a party to this suit but is the current Chief Executive Officer of the Respondent. The contemnor therefore is the Respondent who has not been cited for contempt.

19. The Respondent also averred that the current Chief Executive Officer and Managing Director was not in office when the orders were issued and that the Managing Director who was in office ceased working for the Respondent on 31/12/2019.

20. Whereas that could be true, the omission by the Applicant was to fail to cite the Respondent as contemnor going to the Respondent's Chief Executive Officer in person. This in itself defeats the purpose of the application.

21. I am also aware that the Applicants have other means of executing their judgement and in this case, they chose to cite the Managing Director for contempt without serving him. In the circumstances, it is my finding that the failure by the Applicants to cite the Respondent for contempt makes this application fail.

22. Costs in the cause.

Dated and delivered in Chambers via zoom this 9th day of July, 2020.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Bwire holding brief Ohaga for Respondent – Present

Claimants – Absent