



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION NO. 42 OF 2017

IN THE MATTER OF ALLEGED INFRINGEMENT OF THE PROVISIONS OF ARTICLES 20, 24, 25, 27, 28, 29, 41, 43, 47, 48, 50 AND 73 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE EMPLOYMENT ACT CHAPTER 228 OF THE LAWS OF KENYA

AND

IN THE MATTER OF THE EMPLOYMENT AND LABOUR RELATIONS COURT (PROCEDURE) RULES, 2016

BETWEEN

AMOS WILLIAM OMOLIO.....PETITIONER/APPLICANT

VERSUS

THE COUNTY GOVERNMENT OF KISUMU.....1ST RESPONDENT

GOVERNOR, KISUMU COUNTY.....2ND RESPONDENT

COUNTY SECRETARY, KISUMU COUNTY.....3RD RESPONDENT

CHAIRMAN, COUNTY PUBLIC SERVICE BOARD.....4TH RESPONDENT

RULING

1. The applicant in the notice of motion Application dated 20th April, 2020 prays for an Order in the following terms interalia:-

(a) That the 2nd, 3rd and 4th Respondents herein Mr. Peter Anyang Nyong'o, Mr. Godfrey M. Kigochi and Mr. Babu Kharan be summoned before this Honourable Court to show cause why they should not be committed to Civil jail for acting in contempt of this Honourable Court's Order issued on 11/10/2019 and 9/4/2020.

(b) That on failing to show necessary cause the 2nd, 3rd and 4th Respondents herein Mr. Peter Anyang' Nyongo, Mr. Godfrey Kigochi and Mr. Babu Kharan be committed to prison for a maximum period of six (6) months for being in contempt of this Honourable Court's Orders.

(c) That the 2nd, 3rd and 4th Respondents herein be barred from addressing this Honourable Court in this matter unless and until they have purged themselves of contempt

2. The application is founded on grounds set out on the face of the Notice of Motion and in the supporting affidavit of Mr. Amos William Omollo the Petitioner/Applicant that may be summed that despite receipt of Court Orders dated 11th October, 2019 the respondents have willfully, failed to obey the said Court Orders by failing to pay the petitioner's salary and benefits.

3. That the respondents have also failed to comply with further orders of the Court issued on 9th April, 2020 by failing to suspend the claimant's letter of termination of employment dated 3rd April, 2020.

4. That as a consequence the applicant continues to suffer loss and damage.

5. That the respondents be held in contempt of Court and be punished accordingly.
6. The respondents filed a replying affidavit to the application dated 20/4/2020 sworn by Babu Kharan, the Chairperson of the County Public Service Board of the 1st respondent.
7. The 3rd respondent filed a further replying affidavit sworn to by Godfrey M. Kigochi the 3rd respondent secretary of the Kisumu County Public Service.
8. The 3rd respondent deposes that the applicant has concealed material facts from the Court when making the application which if he did the Court would not have granted the Orders ex parte as it did.
9. That the application dated 9/10/2019 came up in Court on 22/1/2020 when the Court ordered the same to be mentioned on 24/2/2020 to confirm filing of responses by the respondents and further directions.
10. That on 24/2/2020 when the matter came up for mention as ordered the Court confirmed that indeed the Petitioner's salaries had been restored whereupon the Court then ordered that the matter be canvassed by way of written submissions and matter be on 28/4/2020 to confirm compliance.
11. That on that day the Petitioner/Applicant's advocates confirmed that salaries for the applicant had been paid.
12. That on 4/3/2020 the Petitioner/Applicant filed an application dated 4/3/2020 seeking to amend his petition dated 2/11/2017 which application was to be heard on 31/3/2020 and has not been heard to-date.
13. In the said application for amendments, the Petitioner acknowledges that the petition had been overtaken by events.
14. That the interim orders suspending the letter dated 11/10/2017 pending inter-parties hearing on 16/11/2017 at Kisumu lapsed. That the application was argued on 16/11/2020 before Maureen Onyango J. and a ruling by Maureen Onyango dated 14/3/2019 was delivered on 12/4/2018 at Kisumu by Nderi Nduma J. That in the said ruling it was held

"I find that the Applicant has not proved any exceptional circumstances to warrant interference by the Court at this investigative stage of the disciplinary process."
15. That the 1st respondent proceeded with the disciplinary process and a letter of termination of employment of the petitioner dated 15/2/2020 was issued to the petitioner.
16. That the Petitioner failed to attend the disciplinary process. That the Petitioner/Applicant did not disclose all the above material facts to the Court when it issued ex parte Orders on 11/10/2019 and 9/4/2020.
17. The 1st respondent associated itself with all facts set out in the affidavit by the 3rd respondent.
18. The Petitioner/Applicant did not file any further and/or supplementary affidavit to refute the detailed facts set out in the replying affidavits of the respondents.
19. The facts as deposed to by the 1st and 3rd respondents stand unchallenged.
20. The Court is satisfied that as at the time the Court issued interim Orders on 11/10/2019 and 9/4/2020 respectfully, the Petitioner/Applicant was guilty of material non-disclosure which if the facts had been disclosed to the Court, the Court would not have issued the interim orders the subject of this application.
21. Indeed as at the time the Court issued the interim orders oblivious of the previous ruling by Maureen Onyango J, dated 14/3/2019, the matter had been overtaken by events the Court having ruled already on the validity of the pending disciplinary process which thereafter proceeded to conclusion.
22. In the light of the above, the applicant lacks any legitimate cause to cite the respondents for contempt of Court, having obtained the interim Orders upon material non-disclosure of facts, which if the Court was aware of, would not have issued the said Court orders.
23. The application therefore lacks merit and is dismissed with costs.

Dated and delivered at Nairobi this 17th day of December, 2020

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Adori for Petitioner/Applicant

Mr. Yogo for Respondent

Chrispo – Court Clerk