



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 39 OF 2013

JARED OMONDI OBER.....1ST CLAIMANT

JOHN OLUOCH ORINDA.....2ND CLAIMANT

VERSUS

COUNTY GOVERNMENT OF HOMABAY.....RESPONDENT

RULING

1. The Applicants filed a notice of motion application dated 6th July, 2020 seeking an Order in the following terms:

(a) That the honourable Court be pleased to find the respondent's representatives herein are in contempt of the Court Orders.

(b) That this honourable Court do issue warrants of arrest against the following persons for disobeying the Court Orders:-

(i) Mr. Isaya Ochieng Ogwe (County Secretary Homabay County)

(ii) Mr. Noah Otieno (Chief Officer Finance, Homabay County Government.

(iii) Mr. Charles Benson Modi (head of Human Resource Homabay County Government, and they be placed in Civil jail for such period the Court may deem fit.

(iii) That the Court direct the Officer-in-charge of Homabay Central Police Station to facilitate the arrest and placement into custody of the named persons.

2. The application is based on grounds set out on the Notice of Motion and in the supporting affidavit of the applicants to wit:-

(i) The Court issued an Order on 4/5/2020 directing the respondent comply with judgment of the court delivered on 4th October, 2018 failing which the Claimant/applicant to execute the judgment.

(ii) That the respondents have willfully failed to obey the Court Order served on the respondent on 7th May, 2020.

(iii) That it is in the interest of justice that the Orders sought be granted.

3. In its ruling dated 30th April, 2020, the Court declined to grant the respondent stay of execution of the judgment and decree of the Court dated 4th October, 2018.

4. The respondents were left with no alternative but to obey the Court Orders issued in the said judgment.

5. It is manifestly clear that the respondents are aware of the judgment and decree of the Court and are aware that application for stay of execution was declined by the Court.

6. The respondents have failed to mount a substantive response to this application.

7. The Court is left with no alternative but to find that the named persons, who comprise senior officials of the respondent are in willful defiance of the judgment and decree of the Court dated 4th October, 2018.

8. Accordingly, the Court grants the application as prayed by the applicants who have waited since 4th October, 2018 to enjoy the fruits of their judgment and issue the following Orders:-

(a) The respondents through their officers, (i) Mr. Isaya Ochieng Ogwe, County Secretary Homabay County (ii) Mr. Noah Otieno Chief Officer Finance, Homabay County Government and

(iii) Mr. Charles Benson Modi, Head of Human Resource Homabay County Government are guilty of willful defiance of the judgment and decree of the Court dated 4th October, 2018 and are therefore guilty of contempt of Court.

(b) The Court commits the three (3) named persons to civil jail for a period of three (3) months.

(c) The three (3) named contemnors may be released earlier than the three (3) months period upon punching the contempt of Court.

(d) The officer-in-charge of Homabay Central Police Station to facilitate the execution of this Order.

(e) Costs follow the event.

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

Claimants in person.

Mr. Orengo for respondents.

Chrispo – Court clerk