



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION NO. 38 OF 2019

*(Before Hon. Lady Justice Maureen Onyango)*

IN THE MATTER OF VIOLATION OF ARTICLES 10(2)(b), (c), 27(1), 28, 41(1) & 2(a) AND 47(1) & (2) OF THE  
CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE APPLICATION BY THE KENYA COUNTY GOVERNMENT WORKERS UNION

*BETWEEN*

KENYA COUNTY GOVERNMENT WORKERS UNION..... PETITIONER

*VERSUS*

WAJIR COUNTY GOVERNMENT.....1<sup>ST</sup> RESPONDENT/APPLICANT

WAJIR COUNTY ASSEMBLY

SERVICE BOARD.....2<sup>ND</sup> RESPONDENT/APPLICANT

AND

IBRAHIM AHMED YAKUB.....3<sup>RD</sup> RESPONDENT/CONTEMNOR

SHALLE SHEIKH MURSAL.....4<sup>TH</sup> RESPONDENT/CONTEMNOR

ABDULLAHI MOHAMED HASSAN.....5<sup>TH</sup> RESPONDENT/CONTEMNOR

RULING

On 11<sup>th</sup> November 2020 Wasila J. made the following orders: -

**26. I allow the application to the extent that the 3 officers named be summoned to show cause why they should not be committed in jail for disobeying this Courts orders dated 16/1/2020.**

The order was in respect of the Petitioner's application dated 25<sup>th</sup> August 2020 seeking orders that: -

- 1) Spent
- 2) That the following officers of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents namely;
  - a) Ibrahim Ahmed Yakub – Speaker, Wajir County Assembly Service Board
  - b) Shalle Sheikh Mursal – Clerk, Wajir County Assembly Service Board

c) *Abdullahi Mohamed Hassan – Chief Officer, Finance - Wajir County Government.*

*Be summoned before this Honourable Court to show cause why they should not be committed to civil jail for blatantly failing to comply with Orders given by this Honourable Court on 16<sup>th</sup> January, 2020.*

*3) That on failing to show necessary cause, the said officers be committed to prison for a maximum period of six (6) months for being in contempt of this Honourable Court's Judgment/Orders given on 16<sup>th</sup> January, 2020.*

*4) That the Respondents be barred from addressing this Honourable Court in this matter unless and until they have purged of the contempt.*

*5) That Officer Commanding Wajir Police Station do execute the Prayer 2 herein.*

*6) That this Honourable court be pleased to impose a penalty of a fine against the cited officers and in default of payment thereof their movable and immovable assets including but not limited to land and buildings be attached and sold to satisfy the penalty for contempt of Court.*

*7) That cost of this application be borne by the Respondents.*

I have considered the submissions of Counsel. What I have been called upon to do today is to ask the Contemnors to show cause why they should not be punished for disobeying this court's orders made in the judgment of my sister Wasilwa J. The Contemnors are here in response to summons that have been issue against them.

Judgment herein was delivered on 16<sup>th</sup> January 2020. There is no stay of the judgment. The court has been informed that stay was sought in the Court of Appeal in September 2020. Copies of those proceedings have not been shared with this court. The application which is the subject to of the ruling herein was filed on 25<sup>th</sup> August 2020.

Although the Respondents filed a notice of appeal against the judgment on 30<sup>th</sup> January 2020 the law is clear that a notice of appeal does not operate as a stay for a judgment. The Respondents did not apply for proceedings for purposes of preparing a record of appeal until 24<sup>th</sup> March 2020. Even though they applied for the proceedings rather late, it is still a fact that no action was taken to stay the judgment of this court until after the application to cite the contemnors was filed.

I therefore find that the three persons named in the application deliberately disobeyed the court orders as they did not either comply or seek to stay the orders.

The issues cited by Counsel for the Respondents and Contemnors are issues that should have been addressed in the application for contempt which has already been decided and which is the reason for the proceedings today.

I have also noted the issues raised in respect of the proper procedure for contempt proceedings. The proceedings before me are in response to summons which clearly state why the contemnors are to appear in court and what they should expect should they either fail to appear or to satisfactorily explain to the court why each of them should not be punished for failing to obey this court's orders. The explanations by Counsel for the Respondents/Contemnors are not satisfactory as no explanation has been given why they have not complied with court orders, or why they did not approach the court in time for appropriate orders if for any reason they were not able to comply with the court orders. They only came to court after the threat of a contempt application because a reality.

From the foregoing, it is clear that had the application for contempt not been made, the Contemnors had no intention to either comply with the judgment herein or to apply for stay of execution of the same.

**I therefore find that each of the officers, that is Ibrahim Ahmed Yakub, Shalle Sheikh Mursal and Abdullahi Mohamed Hassan are in contempt of this court's orders made in the judgment delivered on 16<sup>th</sup> January 2020. I fine EACH of them Kshs.300,000/- or in default they be committed to civil jail for 14 days.**

**The Contemnors are further directed to purge the contempt or risk further proceedings for contempt.**

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 10<sup>TH</sup> DAY OF DECEMBER 2020**

**MAUREEN ONYANGO**

**JUDGE**