



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 781 OF 2017

(Before Hon. Justice Hellen S. Wasilwa on 25th February, 2019)

VIRGINIA KALUKI KALWE.....CLAIMANT/APPLICANT

VERSUS

CHRISTOPHER MUTINDA MUTUA.....1ST RESPONDENT

KENYA COUNTY GOVERNMENT WORKERS

UNION MACHAKOS BRANCH.....2ND RESPONDENT

AND

KENYA COUNTY GOVERNMENT

WORKERS UNION.....INTERESTED PARTY

RULING

1. The Application before this Honourable Court is the one dated 6th November, 2018. The Application was filed under a Certificate of Urgency through a Notice of Motion filed Under Section 12, 20, 22 of the Employment and Labour Relations Court Act Chapter 234B and all other enabling Laws.

2. The Application seeks the following orders:-

1. THAT the Application be certified urgent.

2. THAT the Applicant be granted leave to commence contempt proceedings against Christopher Mutinda Mutua the 1st Respondent for failing to comply with the terms of the Ruling dated and delivered on 9th March, 2018 by Hon. Lady Justice Hellen Wasilwa.

3. THAT Christopher Mutinda Mutua the 1st Respondent herein be confined to jail for a term not exceeding 6 months or be fined or both as the law provides.

4. THAT the Costs of this Application be borne by the Respondents.

3. This Application is premised on the grounds **THAT**:-

a) Christopher Mutinda Mutua should be cited for contempt; he was properly served with the Order on 12th April, 2018.

b) That despite the Orders reinstating the Applicant to her position as Union Branch Women Representative of the 2nd Respondent, the Applicant has never been reinstated to her position by the 1st Respondent.

c) The Contemnor herein is setting a very bad precedent to the administration of justice in this Country.

d) Court Orders and direction must be complied in accordance with the law and the rules in force.

e) The Orders of the Court were very clear. The same were properly served and a clear return of service filed.

f) Orders of the Court must be followed or complied with.

g) Justice cannot be properly dispensed if parties do not respect decisions and orders of the Court.

h) We pray for leave herein to commence contempt proceedings thereof.

4. The Application is supported by the Affidavit of **VIRGINIA KALUKI KALWE** sworn on 6th November, 2018 in which she reiterates the averments made in the Notice of Motion Application.

5. The Respondents opposed this Application vide a Replying Affidavit sworn and filed in Court on 4th December, 2018, deposed by **CHRISTOPHER MUTINDA MUTUA**, the 1st Respondent herein, in which he admits that he has seen a copy of the Court Order issued on 14th March, 2018 directing the Claimant to be reinstated to her position of the Union Branch Women Representative of the 2nd Respondent.

6. He avers that the said order did not direct him to personally effect the reinstatement of the Claimant. Further, that under the union constitution it's only the branch union that has the mandate to reinstate the Claimant and that on an individual basis he has no authority to reinstate the Claimant.

7. The 1st Respondent contends that the Court Order issued on 14th March, 2018 was never served upon him personally to date.

8. In conclusion, the Respondents urge the Court to dismiss the instant Application as the same is without merit.

9. In disposing of the instant Application, the parties agreed to file written submissions.

10. Claimant/Applicant's Submissions

11. It is submitted by the Claimant/Applicant that the 1st Respondent herein is the Branch Secretary of the 2nd Respondent while the Claimant/Applicant was elected as Women Representative of the 2nd Respondent.

12. It is further submitted that the 1st Respondent in his capacity as the Branch Secretary of the 2nd Respondent has and had the authority to ensure that the Orders of the Honourable Court are complied with.

13. The Claimant/Applicant contends that the 1st Respondent in his Replying Affidavit fails to elaborate the reasons why the award so ordered by the Court continues to be contravened yet both the 1st and 2nd Respondents are jointly sued.

14. The Claimant/Applicant further contends that the Respondents actions are in utter defiance to the Rule of Law and that the Orders of contempt do issue against the 1st Respondent as prayed. For emphasis the Claimant relied on the case of **Teachers Service Commission Versus Kenya National Union of Teachers & 2 Others, Petition No. 23 of 2013** where Lady Justice L. Ndolo stated as follows:-

“The reason why courts will punish contempt of Court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the Court or even personal ego of the presiding judge. Neither is it about placating the applicant who moves the Court by taking out contempt of court proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the Order will be obeyed by those to whom it is directed. A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the Court, the avenues for challenging it are set out in the law. Defiance is not an option.”

15. In Conclusion, the Claimant/Applicant urged the Court to allow her application as the orders of the Court were properly served on the contemnor and a return of service prepared and filed.

16. There are no submissions on Record filed on behalf of the 1st and 2nd Respondent and the Interested Party.

17. I have considered all the averments and submissions from both parties.

18. The cited contemnor has not denied ever receiving the impugned Court order. He however states that he has no capacity to implement the same as only the branch union can do so. What is however clear is that the letter that removed the Claimant from office was signed off by the 1st Respondent Christopher M. Mutua on behalf of Machakos branch as Branch Secretary.

19. The order of Court was served upon him as the person who had authored the letter removing the Claimant from her position.

20. The 1st Respondent cannot in that same vein now feign lack of ability to implement the order of the Court which requires him to undo the mischief complained off.

21. The 1st Respondent has not submitted that he acted without authority of the branch in suspending the Claimant from duty. It is therefore my finding that the Applicant has established their application to warrant the 1st Respondent being cited for contempt *which I now allow.

Dated and delivered in open Court this 25th day of February, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties