



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE 2045 OF 2015

(Before Hon. Lady Justice Hellen S. Wasilwa on 17th September 2019)

KENYA NATIONAL PRIVATE

SECURITY WORKERS UNION.....CLAIMANT

VERSUS

LAVINGTON SECURITY LIMITED.....RESPONDENT

RULING

1. The Applicant filed a Notice of Motion on 11th April 2019 under Section 12 of the Employment and Labour Relations Court Act, Section 5 (1) of the Judicature Act, Contempt of Court Act 2016, Section 3A of the Civil Procedure Rules and Rule 3 of the Court Vacation Rules. It seeks the following orders:-

1. Spent.

2. That leave be granted to the Applicant to institute Contempt Proceedings against the Managing Director Lavington Security Limited, Mr. Pius Chelimo for disobeying the Court Orders given 16th April 2016 and 24th September 2018, respectively.

3. That the Managing Director be summoned to Court on a specified date to show cause why he should not be punished for being in contempt of the Court Orders which has a penal notice.

4. That the Managing Director, Mr. Pius Chelimo be committed to civil jail for such a period as this Honourable Court may determine for contempt of court in that being aware of the orders made by the Honourable Court issued on 15th April 2016 and 24th September 2018, knowingly and wilfully violated and/or disobeyed and/or disregarded and/or thwarted and undermined the effect and purpose of the Orders and/or knowingly and wilfully failed to take steps to ensure the said orders were obeyed.

5. That the Respondent be compelled to pay a fine amounting to Kshs. 500,000 as a consequence of failing to comply with the court orders.

6. That this Honourable Court be pleased to grant any such orders of the court geared towards protecting the dignity and authority of the Court.

7. That the Respondent be directed by this Honourable Court to remit the dues from their own funds when they fall due as ordered on 24th September 2018.

8. The Respondents to bear the costs of this application in any event.

2. The Application is premised on grounds that on 15th April 2016 this Court issued an interim preservative order stopping the Respondent from victimizing, harassing or coercing or dismissing or terminating and transferring any of the union members whose names appear in the check off system and that Respondent does deduct union dues from all the unionisable employees and allow workers to join the union of their choice voluntarily.

3. Subsequently, on 24th September 2018 the Court ordered the Respondent to remit union dues of the members on the check off forms as

remittances and in default of this, they would be liable to remit the dues from their own funds when they fall due.

4. According to the Applicant, this is not the first time the Respondent is in contempt of court orders as there is a systemic contemptuous attitude to the orders of this Court. It avers that it served the said Orders to the Respondent's Managing Director, who received them on 25th January 2019, and it's Advocate on record.

5. It avers The Respondent has subjected the union to conditions in order for it to implement the orders. These conditions include a fresh list of members already recruited, which exercise the applicant contends cannot be conducted for a 4th time as there is no indication of forged forms, and a verification exercise of the check off lists despite this issue having being addressed on 1st March 2017.

6. The Applicant contends that vide its letter dated 21st January 2019 it informed the Respondent that it would file contempt proceedings but the Respondent indicated that it had sent emails on 19th November 2018 and 27th November 2018 which the Applicant maintains it never received.

7. It further contends that the terms of the order were clear and binding to the Respondent who had knowledge of the proper notice in terms of the orders but has acted in breach of the orders.

8. The Application is supported by the Affidavit of Isaac G.M Andabwa, the Applicant's National General Secretary sworn on 11th April 2019 in which he reiterates the grounds on the face of the application. He further avers that since 16th April 2016 it has not received any dues deducted from its employees.

9. The Respondent did not file a response to the application despite seeking leave to file a reply and the same being granted by this Court. The Applicant therefore urged the Court to allow the application.

10. I have examined all the averments on record from the Applicant Union. Annexed to the application are the rulings of this Court dated 15/4/2016 directing the Respondents on remittance of union dues, none victimization and harassment of the union members including dismissal and termination and allowing union members to form a union of their own choice.

11. The ruling was served upon Counsel for the Respondent on 22/4/2016 and another on 17.5.2016.

12. The Applicant has averred that the ruling was also served upon the Respondent managing Director Mr. Pius Chelimo who is being cited for contempt. In support of this application, the Applicant filed a supporting affidavit deponed by one Isaac Wadabwa on 11.4.2019 who at paragraph 9 depones that the order of this Court was served upon the Respondent in person on 25th January 2019 as per Annex GM.4.

13. There is no Appendix GM.4 annexed to the application. However, at page 4 of the application is an order of this Court stamped received by the Respondent. There is no indication that the Respondent's Managing Director is one who received the document in question or was personally served.

14. There is also no affidavit of service to indicate how the service was affected or who was served. In the absence of this definite position that the Respondent's Managing Director Mr. Pius Chelimo was served or had knowledge of the Court order, the application to cite him for contempt cannot stand.

15. However, there is evidence that the Respondent was served and the Respondent as a company have not obeyed the Court order. I therefore find the Respondent guilty of disobeying this Court's order and Respondent is liable for punishment.

16. Costs of the application in the cause.

Dated and delivered in open Court this 17th day of September, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Onyancha for Claimant Applicant

Respondents – Absent