



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 113 OF 2019**

**ELIJAH OPONDO OCHIEL**

**CLAIMANT**

**V**

**SAMSON MIJORO**

**1<sup>ST</sup> RESPONDENT**

**BENSON OCHIENG**

**2<sup>ND</sup> RESPONDENT**

**COLMANS OWINO**

**3<sup>RD</sup> RESPONDENT**

**RULING**

1. On 13 March 2019, the Court allowed an application by the Claimant and ordered the Respondents to pay him salary arrears of Kshs 349,290/-.
2. The Respondents were also directed to remit *Pay As You Earn* tax deductions of Kshs 336,989/- to the Kenya Revenue Authority.
3. The Court set timelines for the payments but the Respondents did not comply.
4. On 30 April 2019, the Claimant moved the Court seeking an order committing the Respondents to civil jail for disobeying the Court orders.
5. The 3<sup>rd</sup> Respondent filed a replying affidavit in opposition to the application on 25 October 2019, and the Court heard arguments on 18 November 2019.
6. The Court reserved Ruling to 29 November 2019 but did not deliver the Ruling because the Respondents informed the Court just before the delivery of the Ruling that they had made a payment of Kshs 60,000/- and committed to pay the balance of Kshs 70,000/- within 2 weeks.
7. However, on 16 December 2019, the Claimant's advocate informed the Court that the balance had not been paid hence this Ruling.
8. It is not disputed that the Respondents initially paid the Claimant Kshs 200,000/- out of the Kshs 349,290/- of the salary arrears leaving a balance of Kshs 149,290/- (another payment of Kshs 60,000/- was made on 18 November 2019).
9. The Respondents have also not remitted the PAYE arrears to the Kenya Revenue Authority.
10. The Claimant now wants to the Court to commit the Respondents to civil jail for not complying fully with the Court order.
11. There are several modes of executing a money order of Court. These include execution by attachment and sale of judgment debtor's assets and committal to civil jail.
12. Ordinarily, the civil jail route should be a last resort mode of execution as the normal mode of executing a decree (including interim decree) is to apply to execute through attachment.
13. Since the Claimant has not demonstrated that he attempted to follow the normal mode of execution without success, it is the view of the Court that sending the Respondents to civil jail would not be in the interest of justice.

14. The application is therefore dismissed with no order on costs.

**Delivered, dated and signed in Nairobi on this 19<sup>th</sup> day of December 2019.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Mr. Njuguna instructed by Njogu Njuguna & Co. Advocates

For Respondent Mr. Kimathi instructed by Costin & Webster Law

Court Assistant Judy Maina