



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1094 OF 2017**

*(Before Hon. Justice Mathews N. Nduma)*

**KENYA HOTELS AND ALLIED WORKERS UNION.....CLAIMANT**

**VERSUS**

**ALL AFRICA CONFERENCE OF CHURCHES**

**(DESMOND TUTU ECUMENICAL CENTRE).....RESPONDENT**

**R U L I N G**

1. The application dated 10<sup>th</sup> July 2017, seeks to have the Respondent, Secretary General of the Respondent Rev. Dr. Adre Karamanga and the Chairman of the Respondent's management committee, Bright G. Mawudor cited for contempt of court for failure to comply with the exparte interim order granted by Wasilwa J on 15<sup>th</sup> June, 2017 and further orders granted on the same application on 29<sup>th</sup> June, 2017.
2. The effect of the said interim orders was to have employees sent by the Respondent on compulsory leave return to work pending the hearing and determination of the application dated and filed on 15<sup>th</sup> June, 2017.
3. Further the applicant sought to invalidate contracts forcefully signed by the permanent employees of the Respondent which were due to take effect on 1<sup>st</sup> July, 2017 until the suit is heard and determined.
4. The application dated 10<sup>th</sup> July 2017 is based on the grounds set out on the notice of motion to the effect, that the Respondent has with impunity, declined to obey the orders of the court and the court should invoke powers given to it under section 13 of the Employment and Labour Relations Court Act Cap 234 B Laws of Kenya and Rule 3(2) of the Employment and Labour Relations Court (procedure) Rules 2016.
5. The application is buttressed by a supporting affidavit of Edward Mukhwana Keya, an employee of the Respondent who deposes that on 29<sup>th</sup> June, 2017 the applicant union informed the grievant to report on duty on 30<sup>th</sup> June, 2017 pursuant to the court order issued by the court on 30<sup>th</sup> June, 2017.
6. That the grievants resumed work but were denied entry to resume duties up to the time of filing the application. That the employees have been denied meals and are kept at a fixed point in the cold.
7. That the Respondent continued to harass, intimidate and threaten the grievants despite the court order restraining the Respondent from such conduct.
8. That the conduct by the Respondent is in contempt of the court order which has been served on them.
9. That the Respondent be found guilty of contempt of court and punished accordingly.

**Response**

10. The Respondent filed a replying affidavit of Bright Mawudor on 14<sup>th</sup> July, 2017 in response to the application dated 10<sup>th</sup> July, 2017.
11. The Respondent admits that the orders were served upon the Respondent and the Respondent immediately moved the court by an

application dated 3<sup>rd</sup> July, 2017 seeking to have the said orders reviewed and set aside since they are incapable of implementation.

12. That the grievants have been reporting on duty in compliance with the court order and they have not been chased away.

13. That the team led by one Purity Kegeni threatened to raze down the centre in an arson attack intended to scare those who had freely and willingly signed the contracts and for this reason the Respondent has prevented them from entering the kitchen since their presence there is a real threat to everyone else within that precincts of All Africa Conference of churches (AACC) pending the hearing and determination of the application.

14. That the Respondent has not threatened, intimidated or harassed any of the employees. That the employees continue to report to work but the usual duties are not assigned to them even though their employment has not been terminated.

15. Some of the employees continue to enjoy medical benefits provided by the Respondent.

16. That management had taken decision to have the grievants go on compulsory leave after purity Kageni threatened the General Secretary in his office in the presence of the deponent and told the two that she would have them sent to their respective countries – Rwanda and Ghana in 'gold plated coffins' in order to give her and other Kenyans peace.

17. That the Respondent has since hired casual workers to do the work hitherto done by the grievants to allow the Guest House to remain operational so as to pay the bank loan owed by the Respondent.

18. That the Respondent cannot allow the grievants back to the kitchen in view of their threats to poison the food and to burn the guest house.

19. With regard to the issue of the contracts raised in the Notice of Motion application dated 15<sup>th</sup> June, 2017, the Respondent also filed a replying affidavit by Bright Mawudor sworn on 13<sup>th</sup> July, 2017 in which they state that the employees had since 2013 requested to be given contracts of Employment as is the norm in other hospitality facilities in Nairobi.

20. That the employees were not forced to sign the contracts. That 11 employees led by Purity Kegeni started threatening those who had signed the contracts and the workforce was divided into two groups creating a lot of tension and there was complete breakdown of order at work.

21. That the orders granted on 30<sup>th</sup> June, 2017 are impossible to implement as majority of the employees had requested for the contracts themselves and are not members of the applicant union.

22. That a return of the rebellious team to the Centre will lead to closure of the center's one hundred and six (106) rooms and seven (7) conference halls and the organization will suffer immensely.

23. The Applicant union replied to the affidavit by the Respondent on 31<sup>st</sup> August, 2017 and state that all the grievants had served the Respondent for at least six (6) years without a single warning or any other disciplinary action. That the union has capacity to represent all the grievants, who are its members.

24. That the employees who support the Respondent are very new, some were employed in 2017, for example Miriam Nzula and Stephen Kanye.

25. That the court stopped operationalization of the forceful contracts and the Respondent has disobeyed the court order. That more employees continued to sign after the court order was issued. That the grievants outlined under paragraph 8(d) have not received salary since the orders of the court were issued but have been reporting for duty.

26. That refusal to assign employees work amounts to unprocedural lock-out contrary to section 76 of the Labour Relations Act 2017.

27. That the application be granted.

### **Determination**

28. By their own admission the Respondent was served with the court order of 30<sup>th</sup> June, 2017 has instead of complying with the same by stopping the implementation of the impugned contracts and allowing the employees who refused to sign the contracts to resume work, instead sought to convince the court that the order by Hon. Lady Justice Wasilwa J. issued on 30<sup>th</sup> June, 2017 is impossible to implement and therefore has chosen not to implement it. They want the court to set aside the said order while they continue to defy it.

29. The facts of this case, present a classical Labour Dispute, common in Kenya where, employers seek to have employees who have hitherto served them on permanent and pensionable basis for a long period of time, enter into fixed term contracts.

30. Such fixed term contracts are often as in the case aimed at limiting if not extinguishing completely, the benefits of continuous employment hitherto enjoyed by the affected employees.

31. The conflict that resulted from the decision by the Respondent to make it mandatory for all the employees to sign the contracts was of the respondent's own making. The Labour Relations Act, provides the mechanism for resolving such disputes, especially after public acrimony

has ensued between the employees (as a group) and the employer.

32. If such conflicts were to lead to mass termination of employment of affected employees, this would be a negation of the gains the Country has achieved over the years as a leader in good Labour Relations. Indeed, the right of employees to associate, join unions and engage the employer to negotiate better terms of service is protected under section 5 of the Labour Relations Act, and anchored under Article 41 of the constitution.

33. This court cannot allow the exercise of the right of workers to agitate for better terms to be used by fearful employers, to victimize the employees for no good cause. The fear expressed by the Respondent that the employees who refused to sign the impugned contracts would poison the food and burn the guest house they worked in and depended upon for their livelihood for many years is far fetched if not comical.

34. The Respondent through the Secretary General and Chairman have openly defied the court order granted by Wasilwa J. on 30<sup>th</sup> June, 2017. They have come to this court with dirty hands, seeking this court to connive with them in such defiance. This court will not entertain such invitation whether or not the order of the court was merited in the first place or not.

35. The duty of every person to whom a court order is directed and in respect of whom such order has been served is to obey the order first. If the person is aggrieved by the order, he/she would then proceed to have the same set aside by the court. This is the foundation of the rule of law. If we were to entertain invitations, such as the one by the Respondent, the consequences to good order and the rule of law would be too ghastly to contemplate.

36. Accordingly, the court finds the Respondent; The Secretary General Rev. Dr. Andre Karamanga and Mr. Bright Mawudor the Chairman of the Management Committee in willful contempt of the court order issued by Hon. Lady Justice Wasilwa on 30<sup>th</sup> September, 2017 and sentences the Respondent to a fine of Kshs.200,000 and Rev. Dr. Andre Karamanga and Mr. Bright Mawudor to a fine of Kshs.50,000 each and in default to imprisonment for a period of three months.

37. The interim orders granted by Wasilwa J. are confirmed and the application to set aside orders dismissed with costs.

**Dated and Signed in Kisumu this 16th day of February, 2018**

**Mathews N. Nduma**

**Judge**

**Delivered and signed in Nairobi this 2nd day of March, 2018**

**Maureen Onyango**

**Judge**

**Appearances**

M/s. J. A. Guserwa & Co. Advocates for Claimant

Mr. Nyandieka & Co. Advocates for Respondent

Anne Njung'e – Court Clerk