



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 107 OF 2015
(AS CONSOLIDATED WITH PETITION 53 OF 2015)

6. The Act provided for four different kinds of violations under contempt of court, that is –

a. Committal for “breach of a judgment order or undertaking to do or abstain from doing an act” provided for under Rule 81.4.

b. Committal for “interference with the due administration of justice (applicable only in criminal proceedings) provided for under Rule 81.1.

c. Committal for contempt

“in the face of court” provided under Rule 81.16.

d. Committal for making false statement of truth or disclosure statement as provided for under Rule 81.17.

7. Of the four forms of violations, only the contempt for ‘breach’ of a judgment, order or undertaking to do or abstain from doing an act has an outlined procedure of service of the order and the penal notice under rule 81.5, 81.6, 81.7 and 81.8.

8. According to rule 81.9, all judgments or orders to do or not to do an act may not be enforced in contempt proceedings unless a warning to the person required to do or not do the act in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of assets, has been prominently displayed, on the front of the copy of the judgment or order served. Consequently, the court order and penal notice must be served simultaneously.

9. In the present case, the contempt of the court order of 16th April 2015, was said to have been committed by the Chairman of the Council of Governors (then) H.E. Peter Munya vide a circular referenced (09/9/48/2A) to County Governments urging them to ensure the adoption of the County Pension Fund in violation of the interim order directed at the 1st Respondent not to interfere with the operations, remittances, contributions and/or rate of the existing pension and/or provident schemes at the Local Authorities and/or County Levels and in particular the 2nd and 3rd Respondents and/or from stopping any remittances until the hearing and determination of the suit.

10. It is submitted that the circular amounts to conduct in willful violation of the aforesaid court order and the 2nd respondent/applicant seeks committal of the 1st, 3rd Respondents and 1st Respondent’s Chairman H. E. peter Munya be declared in contempt of court orders issued on 16/4/2015.

11. The application is supported on grounds set out on the Notice of Motion dated and filed on 10th February, 2016 and in the supporting affidavit of David Koross, the Chief Executive Officer of the applicant, the Local Authority provident Fund (LAPFUND).

12. It is alleged in this notice of motion that the order dated 16th April 2015, was delivered on the 1st Respondent through the Chairman, H. E Peter Munya on an unspecified date. Mr. David Koross does not depose to the issue of service of the court order at all in the supporting affidavit.

13. The court order dated 16th April 2015, with an express warning on the consequences of non-compliance served on the 1st Respondent through its Chairman is not attached to the application.

14. There is absolutely no evidence that the applicant has complied with the mandatory procedure set out herein before in this ruling.

15. For this reason alone, this application is dead on arrival. The same lacks merit and it is dismissed with costs.

Dated and Signed in Kisumu this 8th day of February, 2018

Mathews N. Nduma

Judge

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

Maureen Onyango

Judge

Appearances

Mr. Kalii for 2nd Respondent/applicant

Mr. Odhiambo for 1st & 3rd Respondents

Chrispo – Court Clerk