

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 194 OF 2017

VIRGINIA WANJIKU MWANGI.....CLAIMANT

VERSUS

1. DAVID MWARA CHIRA

2. BOARD OF MANAGEMENT

NDIMANINI PRIMARY SCHOOL.....RESPONDENTS

RULING

1. The Claimant/Applicant seeks the punishment of the Head Teacher Ndimaini Primary School and the 2nd Respondent for contempt of court. The application for contempt was made on 25th January 2018 and it was expressed to be under the provisions of Section 5 of the Contempt of Court Act as read together with Section 12 of the Employment and Labour Relations Court Act. The application is supported by the affidavit of Virginia Mwangi. In her affidavit she asserts that the order issued by the Court was blatantly breached by the alleged contemnors. She stated that the contemnors ignored the court order and denied her access to her work station on opening school on 2nd January 2018 and that their conduct was contemptuous of the dignity of the court. The alleged contemnors replied through the affidavit of David Chira, the 1st Respondent and in his affidavit, he deponed that the Respondents had complied with the Court order and had allowed the Claimant to engage with the parents on modalities of teaching at the ECD centre.

2. In order for the Court to hold a person in contempt, the court must find that there was willful disobedience of a court order. There is no evidence adduced to warrant a finding that the Respondents have breached the court order. The Respondents assert that the Claimant is at liberty to teach and that in the third term she failed to attend to teach the students. The affidavit of Joseph Muriuki Githure is not one the court can rely on as he has sworn an affidavit with a false date and facts. He does not state what he was doing on 29th July 2017 at the shopping center at 12.00 when the BOM Chairperson is said to have gathered a group of people. He later recants this in a further affidavit and says that it was actually on 20th July 2017 when the incident happened. If the contempt occurred in July 2017, why was no action taken till January 2018? I find it unbelievable that the Claimant was not aggrieved after the super sleuth who followed people at a distance saw the desks being taken out of the classroom in July 2017. From the foregoing I find that there is no evidence suggesting that there is contempt of court and accordingly, I dismiss the contempt of court application and order that each party bears their own costs.

It is so ordered.

Dated and delivered at Nyeri this 10th day of April 2018

NZIOKI wa MAKAU

JUDGE