



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2203 OF 2017

(Before Hon. Justice Hellen S. Wasilwa on 18th May, 2018)

GODFREY ODUORY ODONGO.....APPLICANT

VERSUS

MARS SECURITY GUARDS LIMITED.....RESPONDENT

RULING

1. The Application before Court is the one dated 29.11.2017 which Application was filed through a Notice of Motion dated 29.11.2017 and brought under Section 5(1) of the Judicature Act Cap 8 Laws of Kenya, Civil Procedure (Amendment No.2) Rules 2012 Part 8, Section 12 of the Employment and Labour Relations Court Act, Rule 31 of the Employment and Labour Relations Court (Procedure) Rules 2010.

2. The Applicant sought orders as follows:-

- 1. That the Application herein be certified as urgent and be heard ex-parte in the first instance and be heard on priority basis on the 6th day of December 2017 before the hearing of an Application dated 3rd November which has already been fixed for hearing on the same day.***
- 2. That Mr. Silas Shah, Jackson plus all Directors of Mars Security Guards Company Limited do appear before this Honourable Court to show cause why they should not be committed to civil jail for blatantly failing to comply with the Court Order of 20th November 2017 duly served upon the Respondent.***
- 3. That on failing to show necessary cause, the said officers be committed to prison for a maximum period of six (6) months for contempt of Court.***
- 4. That the Respondent be barred from addressing this Honourable Court in this matter unless and until they have purged themselves of the contempt.***
- 5. That the Officer Commanding Central Police Station be directed by an order of this Honourable Court to execute and enforce Order No. (2) hereinabove.***
- 6. That this Honourable Court do issue any other and/or such further orders as it deems fit and appropriate in the circumstances.***
- 7. That the Respondent to bear the costs of this application.***

3. The Application was supported by the affidavit of the Claimant/Applicant herein sworn on 29.11.2017 and also supported by the following grounds:-

- a) That this Honourable Court pronounced itself clearly through Orders of 20th November 2017.***
- b) That the Respondent was served with the said Court Order on 20th November 2017 and duly acknowledged receipt.***
- c) That the Claimant's Counsel through its letter of 23rd November 2017 asked the Respondent to comply with the said Order but***

the Respondent has willfully neglected, refused and/or failed to comply.

d) That since the Respondent is in disobedience and continues to be disobedient to this Honourable Court; it is in the interest of justice that the persons mentioned in the Application herein be punished for contempt.

4. The Applicant has deponed in his affidavit that the Respondent is blatantly in contempt of the Court orders made on 20/11/2017. The Applicant has deponed that he extracted the orders and served it upon the Respondent on 20/11/2017 receipt of which was acknowledged by one Mr. Jackson who had authority from the company to acknowledge such service.

5. The Applicant avers that the Respondent failed to comply with the orders issued hence the current contempt application.

6. The Respondent opposed this application. The Respondent filed a Replying Affidavit on 19/12/2017 deponed to by one Shailesh Shah, the Respondent's Managing Director.

7. He averred that he had not been personally served with the Court order of 20th November 2017 and he has not been specifically cited for contempt. He also avers that Mr. Silas Shah whom the Applicant has sought to cite is unknown to him and so Jackson that is said to have received the orders on behalf of the Respondents.

8. He avers that he is willing to pay the Applicant salary for September which he worked for and a cheque of which they have issued. They also submitted that the Applicant's medical records are with their insurance.

9. I have considered all the averments of both parties. The issues for determination is whether:-

1. Whether Respondent contemnors was ever served with this Court's order dated 20.11.2017.

2. If so whether the Respondent contemnors did any act or omission in contravention of the Court order dated 20.11.2017.

3. If so what orders to grant in the circumstances.

10. On the 1st issue, the Applicant has averred that the Court order was served upon one Mr. Jackson. To prove this assertion, the Applicant attached a copy of a signed order dated 20/11/2017 purported to have been received by one person who signed it on behalf of the Respondent. The person who signed receipt of this order is unknown.

11. The Applicant has not attached any affidavit of serve as proof of the said service describing who the recipient is. This is important in view of the fact service upon a company should be served upon an authorized person or agent. In the absence of an affidavit of service, it is not clear upon whom the order in issue was served and if the recipient had authority to receive the order on behalf of the Respondent.

12. The persons cited for contempt are named as Silas Shah, Jackson and all Directors of the Respondent. The deponent of the Respondent's replying affidavit denies being the Silas Shah so named. It is my finding therefore that the Respondent or any of the named contemnors were never served with the order of this Court dated 20.11.2017 and therefore an order of contempt cannot lie against them.

13. This in my view settles this Application and this Court need not therefore delve into issue No. 2 above.

14. The Applicant has also not informed Court what acts or omissions the Respondent has done or failed to do to warrant committal as prayed.

15. In the circumstances, I do not find the Respondents in contempt of this Court's orders and I therefore dismiss the Application against the Respondent and the named contemnors.

16. Costs in the cause.

Dated and delivered in open Court this **18th day of May, 2018.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Mboha for Respondent – Present

Applicant – Absent