



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 387 OF 2018

(Before Hon. Justice Hellen S. Wasilwa on 11th October, 2018)

KENYA NATIONAL UNION OF NURSES.....CLAIMANT/APPLICANT

VERSUS

NATIONAL INDUSTRIAL CREDIT (NIC) BANK....DEFENDANT/RESPONDENT

RULING

1. The Application before Court is the Claimant/Applicant's Notice of Motion Application dated 7th June 2018 seeking for orders:-

1) Spend

2) That the Respondent/Contemnors herein be denied audience completely till they purge the contempt herein.

3) That the Respondent's Manager at Eldoret branch one Ms. Nazma Amir be summoned before this Honorable Court to show cause why she should not be committed to civil jail for blatantly failing to comply with the Court Orders of 23rd March, 2018.

4) That on failing to show necessary cause, the said officer/s be committed to civil jail for a maximum period of six(6) months for contempt of this Courts orders issued on 23rd March 2018.

2. The said Notice of Motion Application is brought under the provisions of Section 5(1) of the Judicature Act, Rule 81:4 of the England Civil Procedure Amendment No. 2 Rules, 2012, Section 12 of the Industrial Court Act and Rule 31 of the Industrial Court (Procedure Rules 2010 and any other enabling provisions of the law.

3. The Notice of Motion Application is supported by the Supporting Affidavit filed and dated 7th July 2018 and sworn by Seth Ambusini Panyako the Applicants General Secretary who depones that the Applicant herein is a duly registered trade union and the legitimate Labour organization with the mandate to represent the interest of nurses on matters of employment and labour pursuant to the Labour Relations Act No. 14 of 2017.

4. He further avers that the Applicant only operates two bank accounts with the Barclays bank and the Co-operative bank where all the monies deducted from all its union members should be channeled to accordingly.

5. The Applicant aver that they learnt that an illegal account had been opened with the Respondent herein at their Eldoret branch where the said account was being operated fraudulently to divert union money. The Applicant immediately wrote to the Respondent herein vide a letter dated 20th March 2018 complaining of the said account and the manner in which it was been operated.

6. They aver that the said demand letter did not elicit any response from the Respondent and in a bid to protect the money that was being illegally channeled elsewhere, the Applicant herein moved to Court vide a Notice of Motion Application brought under Certificate of Urgency dated 22nd March 2018 seeking for orders *inter alia* that the Court be pleased to issue an injunctive order freezing the bank account No. 1004699676 being operated by the Respondent's Eldoret branch immediately.

7. The Applicant further aver that this Honourable Court was gracious enough to certify the said application urgent and granted the temporary injunctive orders freezing the said bank account. The said order issued on the 23rd March 2018 was duly extracted and served upon the Respondent herein on the 23rd March 2018.

8. The Applicants contend that the Respondent with the utmost contempt chose it wise to ignore the said order as if the same does not exist and continues to have the said account in operation up to today receiving funds from union members that essentially belong to the Applicant herein. This is essentially what prompted the filing of the instant application herein seeking to have the Respondent denied audience completely till they purge the contempt herein.

9. The Respondent filed a Replying Affidavit to this application on the 12th June 2018. The Affidavit was deponed to by one Kenneth Mawira the Respondent's Legal Manager herein who has denied any disobedience to the said Court order of 23rd March 2018. The Respondent has also deponed that the Claimant is trying to seek grant of orders denied in the application of 23rd March 2018 by bringing in this current application.

Issue for determination

10. The only issue for determination is whether the Respondent is in contempt of the orders of this Court. To determine whether there is contempt or not, the Applicant must demonstrate an act or omission by the Respondent in total disregard to the Court order dated 23rd March 2018. The only way to demonstrate this is to show that the account in question which was ordered frozen by this Court is still operating.

11. The Respondent have admitted knowledge of this order but have denied ignoring it. The order issued by Court was clear and unambiguous as it simply provided that **"an injunctive order is issued to immediately freeze the bank account number 100469976 being in the Respondent's Eldoret Branch pending the hearing and determination of this application."**

12. The Applicants have not submitted any iota of evidence that the said Court order has been flouted. The Applicants only stated that the bank account in question is still operational but no evidence to that effect was produced before Court. I do not find this Application with any merit. I therefore dismiss it accordingly.

Dated and delivered in open Court this 11th day of October, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Miss Githinji holding brief for Musyoki for Respondent – Present

Applicant/Claimant – Absent