



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT KERICHO**

**PETITION NO. 10 OF 2017**

***(Before D. K. N. Marete)***

**CHARLES BARONGO NYAKERI.....CLAIMANT**

**VERSUS**

**COUNTY GOVERNMENT OF KISII.....1ST RESPONDENT**

**KISII COUNTY PUBLIC SERVICE BOARD.....2ND RESPONDENT**

**ROBERT OMBASA ACTING COUNTY SECRETARY/ HEAD OF COUNTY**

**PUBLIC SERVICE, COUNTY GOVERNMENT OF KISII....3RD RESPONDENT**

**JAMES ELVIS OMARIBA ONGWAE**

**GOVERNOR KISII COUNTY.....4TH RESPONDENT**

**RULING**

This is an application by way of a Preliminary Objection dated 26th January, 2018. It comes out as follows;

- 1. The 1st, 2nd, 3rd and 4th Respondents or officers cited for Contempt are not the accounting officer of the 1st and 2nd Respondents within the meaning of Section 30(1) of the Contempt of Court Act, 2016.*
- 2. No Notice to Show Cause has been served upon the named officers or offices in accordance with the law.*
- 3. The 1st, 2nd, 3rd and 4th Respondents cited for Contempt are not accounting officers within the meaning of the Public Finance Management Act, No. 18 of 2012 and the Regulations made thereunder-*
- 4. The officers cited were not party to this suit and will greatly be disadvantaged and so cannot be made party to the current proceedings.*

The matter came for hearing on 18th May, 2018 when Mr. Onsembe, counsel for the respondent/objector submitted that he would rely on the four pointed issues raised in support to the preliminary objection above. It was his further submission that section 30(1) of the Contempt of Court Act deals with issues of punishment against management of government organs.

The respondent/objector also submitted a case of non compliance by the applicant in that she has not satiated grounds 2 – 4 of the grounds of preliminary objection. The petitioner’s application lacks proper legal basis and is therefore unsustainable.

The petitioner/respondent opposes that the application on grounds as follows;

3. ....

- 4. The Chief Justice has not made rules under section 37 of The Contempt of Court Act, 2016 and therefore section 5 of The Judicature Act remains in force because 38 of The Contempt of Court Act has not taken effect.*

5. Article 159 (2) (d) overrides the provisions of all the legislative acts of parliament.

The petitioner/respondent at the hearing relied on the above grounds in opposition to the preliminary objection. It was his case that contempt proceedings ensued from the misconduct of the respondents in refusing to comply with the consent orders of court in favour of the petitioner.

The case of the objector overwhelms that of the petitioner/respondent. Non-compliance with the law on contempt of court as enshrined in section 30 (1) of the Contempt of Court Act, 2016 renders the petitioner's application fallible. This inaction is fatal and obliterates the efficacy of the application. It must therefore fail.

I am therefore inclined to allow the preliminary objection with orders that each party bears their costs of the application.

**Delivered, dated and signed this 9th day of October, 2018.**

**D.K.Njagi Marete**

**JUDGE**

Appearances

1. M/s. Onsembe and Wanyama instructed by County Attorney's Offices for the respondent/objector.
2. Mr. Siele Sigira instructed by Siele Sigira & Company advocates for the petitioner/respondent.