



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 132 OF 2006

KENYA LOCAL GOVERNMENT WORKERS UNION
CLAIMANTS

VERUS

NAKURU COUNTY COUNCIL ON BEHALF OF NAIVASHA MUNICIPAL COUNCIL
RESPONDENT

Mr. Mbuvi for claimant/applicant

Prof. Ojienda for the respondent

RULING

1. The court delivered a ruling on 12th October 2015 on application for contempt against the respondents. In the ruling, the court found that although it would appear the respondents may have been aware of the court order and their obligation to enforce it, the applicant had not demonstrated that it had served the respondents properly with the court order, and the application with the penal notice.
2. The court concluded;

“should a proper application be brought before this honourable court, then it would not hesitate to punish those who may be perpetuating defiance of orders of this court that have not been set aside.”
3. It is not in dispute that Hon. Kosgei delivered a judgment on 31st August 2007 against the erstwhile Naivasha Municipal Council.
4. It is not in dispute that the responsibilities of the former Naivasha Municipal Council have been taken over by Nakuru County Government who have been substituted as the respondents.
5. The applicant now states that, it has properly served the respondents with the court orders and the application with the penal notice.
6. That the applicants have been seeking justice for ten (10) years and deserve to get the fruits of the judgment.
7. That the award bears acknowledgement stamp of the Governor of Nakuru County and therefore he has

personal knowledge of the award.

8. That in any event, personal service need not be proved especially where the alleged contemnors knew of the existence of the court order as per the decision of the Court of Appeal in the case of **Justus Kariuki Mate and another versus Martin Nyaga Wambora & another [2004] eKLR**.

9. Furthermore, **Atkins Court Forms, contempt of Court Volume 8(2) at paragraph 320**, the learned commentators expressed themselves as follows;

“in the case of an application to commit for breach of an order, judgment or undertaking, the evidence supporting an application or committal must prove:

1. Personal service of the order, judgment or undertaking duly indorsed in with a penal notice where a person is required to do an act but where a person is required to abstain from doing an act, the court has a discretion, which may be exercised prospectively or retrospectively to dispense with service of the order, judgment or undertaking if the alleged contemnor has had notice of it”

10. The Court of Appeal in Wambora case held;

“The trial court was correct in holding that the law as there was in contempt of court had since changed; the law as it stands today is that knowledge of an order is sufficient for purposes of contempt proceedings.”

11. The respondents state that;

i. There was lack of personal service of the certificate of urgency and the notice of motion application dated 26th January 2016.

ii. No judgment or order was served in respect of Industrial Cause No. 132 of 2006 or Judicial Review No. 351 of 2010.

iii. The Affidavit of service of Raphael M. Kilonzi dated 26th January, 2016 fails to show there was personal service of contempt proceeding to the County Secretary Nakuru County, Joseph Mogusi Montari and Governor, Nakuru County, Hon. Kinuthia Mbugua.

iv. The claimant’s second application dated 26th January 2016 is *resjudicata* since it is exactly the same to one dated 5th February 2015 which was dismissed by the court. That the issues are similar with those determined in the ruling delivered on the 12th October 2015.

v. That the affidavit by the claimant alleging personal service of the certificate of urgency and the Notice of Motion dated 9th February 2016, the judgment by Hon. Kosgei dated 31st August 2007 and the order together with the personal notice that the claimant filed is false and misleading.

12. That the application dated 26th January 2016 be dismissed in the interest of fairness and justice.

Determination

13. The application of 5th February 2015 was dismissed on account of failure to serve the respondents with the order of the court and the application with penal notice on the respondents.

14. The court also had expressed doubts as to whether the respondents had personal knowledge of the court order.

15. This is no longer the case from the papers filed on record. It is clear that the court order and the

application with penal notice was served on the Governor of the County and bears the stamp of the office. At least, the court is satisfied that the respondents are aware of the award of the court, the application to commit them for contempt of court order and the penal notice to that effect.

16. The court is also satisfied that the respondents have willfully refused to comply with the court order. The matter is not *resjudicata* since the failure to comply with the court order is still outstanding and service has been done afresh to remedy this noted anomaly.

17. The court relies on the Court of Appeal decision in the matter of **Justus Kariuki Mate and another Versus Martin Nyaga Wambora and another [supra]** to find that the respondents have knowledge of the court order in question and have willfully failed to comply with the same and are therefore guilty of contempt of court and makes the following orders in terms of the application;

- a. That the Nakuru County Secretary Mr. Joseph Mogusi Motari and the Governor, Honourable Kinuthia Mbugua be committed to Civil Jail for three (3) months for failing to comply with the terms of the judgment dated and delivered on 31st August 2007 by Hon. Paul K. Kosgei;
- b. That the County Secretary is compelled to comply with the terms of judgment dated and delivered on 31st August 2007 by Hon. Paul K. Kosgei and that these orders be enforced by the Governor Nakuru County.
- c. The sentence in (a) above is suspended for a period of three (3) months to allow the contemnors to comply with (b) above.
- d. That the respondents bear the costs of the application.

Dated and delivered at Nairobi this 27th day of January 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE