



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1614 OF 2015**

**PETER MBUTHIA GITAU.....CLAIMANT/APPLICANT**

**VERSUS**

**KENYA REVENUE AUTHORITY.....RESPONDENT**

**RULING**

1. By a motion dated 9<sup>th</sup> February, 2016 the claimant sought orders among others that:

1. That pending the hearing and final determination of the claim herein the honourable court be pleased to order the Respondent to pay the Applicant his salary arrears and allowances from 10<sup>th</sup> November, 2015 to date and to continue paying his salary until final determination of the claim.
2. That the Respondent's Commissioner General and the Chairman of the Disciplinary Committee be committed to civil jail for having deliberately disobeyed orders of this court issued on 9<sup>th</sup> October, 2015.
3. That in view of the Respondent's refusal to comply with the honourable court's orders issued on 9<sup>th</sup> October 2015, this honourable court be pleased to review its orders issued on 9<sup>th</sup> October 2015, and order the Respondent to pay the Applicant his salary from February 2013 to date and to continue paying his salary until final determination of the claim.

2. The application was based on the main grounds that:

1. That on 9<sup>th</sup> October 2015 the Honourable Justice Abuodha issued orders that required the Respondent herein to hear and determine the Applicant's disciplinary issue forthwith in any case not more than 30 days from date of the order.
2. That the Respondent was represented by an advocate at the time the ruling and orders were issued by the Honourable Justice Abuodha and therefore has always had notice and full knowledge of the said orders.
3. That since the orders were issued on 9<sup>th</sup> October 2015 and the Respondent was given 30 days from the date thereof, he was supposed to hear and determine the Applicants disciplinary issue by 10<sup>th</sup> November, 2015.
4. That the Respondent's Commissioner General and Chairman of the disciplinary committee have

deliberately disobeyed the honourable court's order issued on 9<sup>th</sup> October 2015 by refusing and or deliberately ignoring to determine the Applicant's disciplinary dispute within 30 days.

5. That all through the months of November and December 2015, January 2016 the Applicant has made several visits and requests for the decision but the Respondent has been unresponsive.

6. The respondent, its commissioner General and the Chairman have conducted themselves with a lot of contempt and have despite the Applicant's numerous pleas and the Honourable court orders refused to accord him fair treatment.

3. The respondent in opposition to the application filed a replying affidavit through one Patrick Munuhe who deponed on the main that:

1. That I wish to oppose the Claimants application and state that the respondent herein has not refused to comply with the orders of Honourable Justice Abuodha issued on 10<sup>th</sup> November, 2015 directing the respondent to hear and determine the claimants disciplinary case within 30 days.

2. That indeed the respondent scheduled a disciplinary hearing on 9<sup>th</sup> October 2015. Attached and marked "PM1" is a letter dated 1<sup>st</sup> October 2015 inviting the applicant for the hearing.

3. That the invitation was turned down by the applicant vide a letter from his advocate dated 5<sup>th</sup> October 2015. Attached and marked "PM2" is a copy of the letter dated 5<sup>th</sup> October 2015.

4. That consequently another hearing date of 23<sup>rd</sup> October 2015 was set and the applicant was invited vide the respondent letter dated 21<sup>st</sup> October 2015. Annexed and marked "PM3" is a copy of the invitation letter.

5. That on 23<sup>rd</sup> October 2015 the claimant was heard and the disciplinary committee made its recommendation to the Commissioner General in line with paragraph 13.1 of the respondent code of conduct.

6. That according to the respondents code of conduct, the Commissioner General is not bound by the recommendations of the disciplinary committee.

7. That in this case, the Commissioner General did not concur with the recommendations of the disciplinary committee and instead recommended for a review in accordance with paragraph 10.3 of the code of conduct.

8. That while the disciplinary committee concluded the matter within 30 days, a review panel had to be reconstituted as per the Commissioner General's recommendations

9. That the review panel sat on 16<sup>th</sup> February 2016 and recommended for a dismissal.

4. Prayer 2 of the Notice of Motion which sought an order for payment to the claimant of salary arrears and allowances pending final determination of the claim, had been dealt with in the court's ruling made on 9<sup>th</sup> October, 2015 and is therefore spent.

5. Prayer 3 of the motion seeks committal to civil jail of the respondent's Commissioner General and the Chairman of the disciplinary committee for deliberately disobeying the orders of the court issued on 9<sup>th</sup> October, 2015. Disobedience of a court order is a matter that the court would not take lightly and would not hesitate to punish for. However, considering the drastic nature of the order, it is a jurisdiction which must be exercised sparingly and in clear and obvious cases.

6. It is true this court ordered that the respondent do hear and determine the disciplinary case against the

claimant within 30 days from the date of the ruling. The respondent attempted to invite the claimant to a disciplinary hearing on 9<sup>th</sup> October, 2015 but the same met resistance from the claimant's lawyer via a letter dated 5<sup>th</sup> October, 2015. The respondent in second attempt issued a letter dated 21<sup>st</sup> October, 2015 calling for a disciplinary hearing on 23<sup>rd</sup> October, 2015.

7. According to the respondent this hearing took place and the claimant was heard and recommendations made to the Commissioner General for action. However, the Commissioner General did not concur with the recommendations and requested for a review in accordance with paragraph 10.3 of the respondents code of conduct.

8. It would therefore seem to the court that the hearing and determination of the claimant's disciplinary issue did not take place beyond the 30 days ordered by the court. A review or an appeal against a decision is not part of the initial hearing. If by the 23<sup>rd</sup> October, 2015 the respondent had heard the claimant's disciplinary case and made its recommendations to the Commissioner General for recommendation then the issue of contempt does not arise.

9. The court will therefore not grant the orders sought in the application dated 9<sup>th</sup> February, 2016 but would in view of the fact that the disciplinary hearing has occurred and the outcome known to the claimant direct that the order staying the suit herein be in the circumstances lifted and that the suit shall proceed to full trial on merits.

It is so ordered.

Dated at Nairobi this 3<sup>rd</sup> day of February 2017

**ABUODHA JORUM NELSON**

**JUDGE**

Delivered this 3<sup>rd</sup> day of February 2017

**ABUODHA JORUM NELSON**

**JUDGE**