



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 316 OF 2013

(Before Hon. Lady Justice Maureen Onyango)

KENYA HOTELS & ALLIED WORKERS UNION CLAIMANT

-Versus-

LAUGHING BUDDHA CAFE & LAUNGE RESPONDENT

RULING

Judgment in this matter was delivered on 20th November 2016 and decree extracted in the following terms -

1. The respondent to commence deduction of union dues from the salary of the employees whose names appear on the check-off form and remit to the union's designated account with effect from 1st December 2015;
2. The Respondent to sign recognition agreement with the union within 30 days
3. I award the Claimant costs of Kshs. 50,000/=

By an application filed on 16th December 2016, the Claimant Union seeks the following orders -

1. That, the director of the respondent Mr. Nana Gadia be ordered to appear in person in this Honourable Court during the hearing of this application to show cause why section 13 of the Employment and Labour Relations Court Act cap 234B cannot be enforced against him.
2. That, the Honourable Court be pleased to issue execution order and warrant of arrest against the director of the respondent Mr. Nana Gadia.
3. That, the Honourable Court be pleased to execute her own orders as per section 13 of the Employment and Labour Relations Court, Cap 234B laws of Kenya.

The Application is made under section 12 and 13 of the Employment and Labour Relations Court Act and is supported by the affidavit of **Chadwick Oloto Ng'ono** and the following grounds:-

1. That, on 20th November 2015 the Honourable Court delivered its Judgment directing the respondent to commence deduction of union dues from the salary of the employees whose names appear on the check off form and remit to the union designated account with effect from 1st December, 2015.

2. That, on the same date the Honourable Court did also order the respondent to sign the recognition agreement with the claimant applicant union within 30 days.

3. That, the director Mr. Nana Gadia has violated the aforementioned orders by declining to deduct and remit union dues to the claimant union and has further refused to sign recognition agreement despite numerous requisition.

4. That, the Honourable Court issued a Decree over the same judgement on 4th April 2016 which has been served upon the respondent.

5. That, the respondent has not moved to court either to set aside or review the said orders therefore they remain binding.

6. That, the Honourable Court has powers to enforce her own orders under section 13 of the Employment and Labour Relations Court Act Cap 234B and rule 32 of the Employment and Labour Relations Court (Procedure) Rules.

7. That, the decision of the respondent to decline to observe court orders is deliberate and with disrespect to this Honourable Court.

8. That, if the orders sought are not granted the applicant stands to lose irreparable damages.

The Respondent did not file any response to the application. The application was fixed for hearing severally when the Respondent was properly served but did not attend court. On 28th March 2017 after ascertaining that the Respondent was properly served I allowed the Applicant to proceed with the hearing in the absence of the Respondent.

Mr. Simiyu for the Applicant submitted that the Respondent has declined to deduct union dues and sign recognition agreement as directed by the Court. He submitted that the applicant has made efforts to have the Respondent comply with orders of the court made on 20th November 2015 in vain. He prayed that the court finds that Respondent in contempt of court orders within the meaning of section 13 of the Employment and Labour Relations Court Act and Rule 32 of the Employment and Labour Relations Court (Procedure) Rules. He submitted that the Respondent has disrespected this court and the disrespect has prejudiced the Applicant's members in terms of their constitutional right to collective bargaining under Article 41 of the Constitution.

Determination

I have considered the application and the affidavit in support thereof. I have also considered the submissions by Mr. Simiyu on behalf of the applicant. The law on contempt of court in this court is provided for under section 13 of the Employment and Labour Relations Court Act as follows-

Enforcement of court orders

A judgement, award, order or decree of the Court shall be enforceable in accordance with the rules made under this Act.

The Employment and Labour Relations Court (Procedure) Rules further provide as follow-

32. (1) The Registrar shall issue an order in execution of a decree.

(2) Rules on execution of an order or decree shall be enforceable in accordance Civil Procedure Rules.

Under section 4(1)(a) of the Contempt of Court Act 2016 civil contempt is defined as "*willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an*

undertaking given to a court" and under subsection (2) as "... an act that is willfully committed to interfere, obstruct or interrupt the due process of the administration of justice in relation to any court, or to lower the authority of a court, or to scandalize a judge, judicial officer in relation to any proceedings before the court, on any other manner constitutes contempt of court."

Among the objects of the Act are to (a) uphold the dignity and authority of the court;(b) ensure compliance with the directions of court;(c) ensure the observance and respect of due process of law;(d) preserve an effective and impartial system of justice; and (e) maintain public confidence in the administration of justice as administered by court.

In the present case the Court made orders directing the Respondent to commence deduction of union dues from the salary of the employees whose names appear on the check-off form and remit the same to the union's designated account with effect from 1st December 2015, to sign recognition agreement with the union within 30 days and to pay the Claimant costs of Kshs. 50,000/=. The Respondent has not complied to date. The Director was served but did not responded to the application or attend court to explain why. In the affidavit of service filed in court on 28th March 2017 the process server one AMOS ELIUD OSANGO states at paragraph 3 thereof that-

3. THAT, on the 9th March 2017 at around 4.30pm I proceeded to Tuff Foam Mall 3rd Floor situated along Jomo Kenyatta High Way, Kisumu. Upon reaching there, I found the Director Mr. nana Gadia, I introduced myself to him and informed him the purpose of my visit and thereafter I tendered to him copies of the said Hearing Notice which he acknowledged receipt but refused to sign and stamp on a copy of the said document returned herewith duly served.

I am satisfied by the evidence on record that Mr. Nana Gadia was aware of the judgment of this court and the application herein and further that he received the hearing notice but failed to attend court either in person or by duly authorized representative to show cause why he has not complied with the orders of this court.

As stated by **Romer L.J** in **Hadkinson v Hadkinson(1952) ALL ER 567**:

"It is the plain and unqualified obligation of every person, against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void"

For, a party who knows of an order, whether null or valid, regular or irregular cannot be permitted to disobey it. It would be most dangerous to hold that the suitors or their solicitors could themselves judge whether an order was null or valid. Whether it was regular or irregular, that they should come to the court and not take upon themselves to determine such question. That the course of a party knowing of an order which was null and irregular, and who might be affected by it, was plain, he should apply to court that it might be discharged. As long as it exists, it should not be disobeyed." Per Lord Cottenhan L.C in Chuck v Cremer(1) 1 COOP TEMP COTT 342).

I further agree with the observations of Aburili J in **Sam Nyamweya & 3 Others v Kenya Premier League Limited & 2 others [2015] eKLR** that-

"...it cannot be gainsaid that the duty to obey the laws by all individuals and institutions is paramount in the maintenance of the rule of law, good order and the due administration of justice. In addition, the dignity and authority of our courts which exercise judicial authority derived from the people of Kenya must be jealously guarded."

I am satisfied that Mr. Nana Gadia has disobeyed the orders of this court to comply with the decree served upon the Respondent and has further ignored the hearing notice thus bringing the court into disrepute. For these reasons I make the following orders-

1. That, the director of the respondent Mr. Nana Gadia be and is hereby ordered to appear in person in this Honourable Court on 13th June 2017 at 9.00 am in the morning to show cause why he should not be jailed for 6 months for disobedience of the judgment of this court delivered on 20th November 2015 and the decree issued on 4th April 2016.

2. That, should Mr. Nana Gadia fail to attend court on the date stated hereinabove a warrant of arrest shall be issued for his arrest and presentation before this court to answer charges of contempt of court orders.

3. That this order be served upon Mr. Nana Gadia together with a penal notice and an affidavit of service be filed in court confirming service.

Dated, Signed and Delivered this 8th day of JUNE, 2017

MAUREEN ONYANGO

JUDGE