



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT KISUMU**  
**CAUSE NO. 10 OF 2013**

*(Before Hon. Lady Justice Maureen Onyango)*

**JOHN N. MARWA & 52 OTHERS.....CLAIMANT**

**VRS**

**MIGORI COUNTY GOVERNMENT.....RESPONDENT**

**RULING**

On 10th April, 2015 the Claimants/Applicants filed a Notice of Motion under certificate of urgency seeking the following orders

1. That this application be certified urgent and be heard on priority basis.
2. That the Respondent be cited for contempt of court for disobeying the lawful court orders issued on 13th day of October, 2013.
3. That the Honourable Court be pleased to grant leave to the applicants to apply for orders of sequestration to attach the properties of the Respondents and have them sold to defray the damage caused by them in disobeying the lawful court orders issued and dated 13th October, 2013

The grounds in support of the application are that;

1. That Applicants obtained lawful court orders vide this Honourable court on 13th October, 2013 restraining the Respondents from dismissing the Applicants herein from their employment without due process pending the hearing and determination of the suit herein.
2. That the Respondents were duly served with the said court orders as required by law but disobeyed the same and thus went a head to dismiss some of the Applicants herein.
3. That the Respondents have also declined to pay the Applicants their monthly salaries/wages for over eight months due to this suit.
4. That the Respondents have issued termination letters to the Applicants ordering them not to transact anything on behalf of the Respondents without any right colour or just cause.

The application is supported by the affidavit of John Ngariba Marwa the 1st Applicant/Claimant.

The Respondents opposed the application and filed a Notice of Preliminary Objection and Grounds of Opposition. In the notice of Preliminary Objection the Respondent raised the following grounds;

1. That the Applicants withdrew the 1st Application seeking the same orders thus this is an abuse of the court process.
2. The temporary order was obtained 1 year ago and that the same is no longer effective.
3. The Applicant has not attached the order restraining the Respondents from dismissing, retrenching, interdicting or interfering with the Claimants employment position to the main application
4. The Applicants application as drawn and filed is irregular, incompetent and fatally defective.
5. On the whole, the cause and the instant application is misconceived, scandalous, frivolous, vexatious and blatant abuse of the due process of this Honourable Court.

In the Grounds of Opposition the Respondents raised the following grounds;

1. That the application is inept, devoid of merit and brought in bad faith.
2. That the application has been filed after inordinate delay and that the temporary order obtained 1 year ago has since expired.
3. That the Applicants withdrew the 1st application seeking the same orders thus this is an abuse of the court process.
4. That the Applicants have not attached the order restraining the Respondents from dismissing, retrenching, interdicting or interfering with the Claimants employment position to the main application.
5. That the application was not filed timeously and the delay in filing the application is unexplained.
6. That the 1st and 2nd Respondents intend to raise a Preliminary Objection at the hearing hereof.
7. The life of an injunction is one (1) year once the Claimants have not prosecuted their case within one year, the injunction collapsed forthwith.
8. That the application is frivolous, vexatious and otherwise an abuse of the court process

The application was argued by way of written submissions.

In their written submissions the Claimants/Applicants submitted that on 8th October, 2013 they obtained orders of temporary injunction restraining the Respondent's from terminating their employment pending hearing of their application interpartes on 13th October, 2013. That on 13th October, 2013 the court granted orders restraining the Respondents from terminating their employment pending the hearing of the suit herein. The Applicants submit that the Respondents failed to obey the court orders and dismissed two of the Claimants Mr. Thomas Gibayi and Musa Muita in contravention of the court orders.

On 17th October, 2014 the Applicants filed an application seeking orders citing the Respondents for contempt but the application was withdrawn as there was no evidence of service of the court order upon the Respondents.

Applicants submitted that thereafter the order was again served on the Respondent's through their County Attorney Mr. Kwanga on 2nd April, 2015. That thereafter the Respondents issued letters of termination to several Claimants contrary to the Court order of 13th October, 2013 which prohibited *"the Respondents, their servants, agents, employers and/or persons duly authorised by them to act on their behalf are restrained from dismissing, interdicting and or interfering with the Claimants employments positions in any manner whatsoever and/or howsoever pending hearing and determination of this suit."*

The applicants submit that the orders were served upon the Respondent through their (then) Advocate

Mr. Kwanga who later became the County Attorney of the Respondents.

Counsel for the Applicants submits that the Respondent's current advocates are aware of the orders and it was their responsibility to peruse the file and advise the Respondents about the court orders. Counsel for the Applicants submits that the order was again served upon the County Attorney Mr. Kwanga on 2nd April, 2015 before the Applicants were served with letters of termination. That no prejudice will be suffered by the Respondents as a result of failure to attach the court order.

The Respondents in their written submissions reiterated the issues raised in the Grounds of Oppositions and Preliminary Objection.

### **Determination**

For a person to be cited for contempt, there must be evidence of a court order having been served on that person. The person to be cited ought to be personally notified so that they can show cause why they should not be cited.

In the present case, there is no leave to file contempt proceedings. The parties against whom the application for contempt is filed are the Respondents, who are corporate entities and therefore not capable of disobeying court orders in person. They can only act through their authorised officers who have not been cited or personally served.

Secondly, the order served does not have a Penal Notice and was served on 2nd April, 2015. An Order dated 13th November, 2013 can not be deemed to have been validly served if the service is effected on 2nd April 2015, almost one and half years later.

I also agree with the submissions by Counsel for the Respondent that an Order for Temporary Injunction is only valid for 12 months unless extended by the court. The Applicants have not demonstrated that the orders were extended

For the foregoing reasons I find no merit in the application. The same is hereby dismissed with no orders for costs.

**Dated, signed and delivered this 29th Day of January, 2016**

**MAUREEN ONYANGO**

**JUDGE**