



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

PETITION NO.6 OF 2015

DR. FREDRICK NJERU KAMUNDE.....PETITIONER

VERSUS

THARAKA NITHI COUNTY GOVERNMENT.....1ST RESPONDENT

S.M. RAGWA, GOVERNOR THARAKA NITHI COUNTY.....2ND RESPONDENT

C.N MONARI.....3RD RESPONDENT

(Before Hon. Justice Byram Ongaya on Wednesday, 30th March, 2016)

RULING

On 11.03.2016 the court made a ruling on the Petitioner's applications for contempt. In order 2 the court ordered thus,

“2. That the 2nd respondent Samuel M. Ragwa shall attend court in person or by his advocate on Friday 8.03.2016 at 9.00 am to show cause why the court should not issue warrants or orders for his arrest and committal in civil jail until he has purged or is desirous of purging the contempt”

On 18.03.2016 the 2nd respondent's Advocate Mr. Murango Mwenda attended court and he made submissions on behalf of the 2nd respondent.

Mr. Murango Mwenda submitted that he had instructions from the 2nd respondent to apologize to the court on his behalf for acts of commission and omission in disobedience of the court orders. He stated that the 2nd respondent informed the court that he never intended and contemplated to do anything to lower the dignity and authority of the court. The 2nd respondent regretted the turn of events and the 2nd respondent was extremely remorseful and he requested the court to take up his apologies.

Counsel for 2nd respondent submitted that the 2nd respondent had taken steps to purge the contempt by complying with the court orders. In particular it was showed to the court that the outstanding and withheld salaries and allowances had been paid to the petitioner, the petitioner had been returned to the office he held of County Secretary and he was fully at work, steps were being taken to avail the motor vehicle for petitioner's official use and private security personnel deployed at the petitioner's home would be paid.

The 2nd respondent's counsel submitted that the respondent was desirous of complying with the court

orders; he had purged the contempt and was willing to do all that remained in full compliance with the court orders.

Upon listening to counsel for the petitioner Mr. Karanja Munori, the court ordered as follows:

- (a) The 2nd respondent to provide the petitioner transport by way of assignment of appropriate motor vehicle by close of 21.03.2016.
- b) The 2nd respondent to provide the payslips showing breakdown of the payments made by close Monday 21.03.2016.
- c) The 2nd respondent to ensure that security personnel deployed to serve the petitioner are paid by next court appearance.
- d) Today's costs in the cause.

On 30.03.2016 at 9 am the parties' Advocates have made their respective submissions. The court has considered those submissions. The effect is that the 2nd respondent has been shown to have substantially and fully complied with all the court's directions and orders in that regard. The petitioner has raised some administrative issues but which the court finds that they do not go into the root of the 2nd respondent's demonstrated compliance with the court orders. The court finds that the 2nd respondent has taken the earliest opportunity to tender apology, to show desire to comply with the court orders and has moved to comply with the court orders.

In such circumstances the court returns that the 2nd respondent will not be subjected to the drastic imposition of a jail term or fine.

Instead, the court imposes a severe reprimand against the 2nd respondent and further that the 2nd respondent shall under his hand file and serve by close of 1.04.2016 his affidavit on apology.

The 2nd respondent had opposed the petitioner's affidavit of 30.03.2016 on account that it was filed without leave. It was submitted that the same was filed to show the status of compliance. The court returns that the affidavit did not cause prejudice to the extent that it enabled the court to see the status of the compliance as was the position of the petitioner in the matter. The affidavit will therefore be allowed on record as filed and served for that purpose.

In conclusion the court determines the notice to show cause in terms of order 2 in the ruling delivered on 11.03.2016 with orders as follows:

- a) The 2nd respondent Samuel M. Ragwa is hereby severely reprimanded by the court for disobedience of court orders as found in the ruling delivered on 11.03.2016.
- b) The 2nd respondent Samuel M. Ragwa to file and serve affidavit of his apology by 1.04.2016.
- c) Costs on the notice to show cause to be paid by the 2nd respondent.
- d) Parties to fix the petition for mention on a convenient date with the view of fixing an appropriate hearing date.

Signed, dated and delivered in court at Nyeri this **Wednesday, 30th March, 2016.**

BYRAM ONGAYA

JUDGE