



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 759 OF 2012**

**(Before Hon. Justice Hellen S. Wasilwa on 21<sup>st</sup> April, 2016)**

**KENYA UNION OF ENTERTAINMENT AND**

**MUSIC INDUSTRY EMPLOYEES .....CLAIMANT/APPLICANT**

**VERSUS**

**BOMAS OF KENYA LIMITED .....RESPONDENT**

**RULING**

1. The Application before Court is one dated 12.11.2015, where the Applicant seeks the following Orders:

1. *The Application be certified as urgent and heard on priority basis.*
2. *That the Honorable Court order/summon the General Manager (Mr. Quresh H. Ahmed) and the chairman of the board (Mr. Josiah Magut) to appear before the Honorable Court in person to show cause why they should not be committed to civil jail for contempt of Court Orders till the said amount is paid in full.*
3. *That in the alternative to issue Orders committing both General Manager and the Chairman of the Board (Mr. Quresh H. Ahmed and Josiah Magut) respectively to civil jail till compliance is made.*
4. *That in case either of the two (2) orders is granted then the Honourable Court to issue an Order directing the OCS – Langata Police Station to effect the same within a certain time frame.*
5. *That the costs of this application be met by the Respondent herein.*
6. *That any other Order the Honourable Court may deem fit to grant.*

2. The Application is premised on the grounds that:

- a. *That, the Honourable Court issued her last Orders in this matter on 3<sup>rd</sup> day of August, 2015, prompted by a ruling of 27.7.2015 by Honourable Lady Justice Hellen Wasilwa.*
- b. *That the aforesaid Orders were prompted by an application by the Respondent to stay the Auctioneers process of which they proposed to pay monthly installment of Shs. 205,000/= till the total amount of Shs. 2,801,729.00 is paid which was proposed by the Respondent herself.*

- c. *That, the Respondent has continued to disobey the Court Orders by refusal to pay the said installments and agency fee that she had already deducted from the 26 employees.*
  - d. *That, the Applicant/Claimant herein has tried to enforce the foresaid Orders diplomatically but it has proved impossible as they engaged two (2) different Auctioneers namely Keysian Auctioneers and Fantasy Auctioneers who have either been compromised and or failed to enforce the said Orders.*
  - e. *That the Orders being sought herein were granted by your brother Honourable Justice James Rika on 10.6.13 but no specific Police Officer was directed to effect the same making it difficult to enforce.*
  - f. *That the Orders sought are provided for under Section 12 of Industrial Court Act, 2011 and Rule 31 of the Industrial Court (Procedure) Rules, 2010.*
  - g. *That if the Orders sought are not granted the Applicant/Claimant will suffer irreparable damage and this Honourable Court will demean her credibility.*
3. The Application is supported by the Affidavit of Job W. Muchua the General Secretary of the Claimant. He states that the instant Application is as a result of Orders of this Honourable Court of 27.7.2015 attached to the Application as (Appendix 1) where execution was halted on condition that the Respondent would pay the decretal sum of Shs. 2,801,729.00 in installments of Shs. 205,000.00 till payment in full.
  4. They state that the Respondent has failed to comply with the said Orders even Auctioneers sent to recover the sum have failed to do so. Further that the Orders of 27.5.2015 were not directed to a specific police officer and as such it has been difficult to enforce.
  5. The Claimant in their further affidavit refute the payment of the award following the Labour Ministry report and state that the Respondent have only been remitting monthly deductions and agency fees and not as per the Order of the Court. They deny ever receiving the letter referred to in paragraph 8 of the Replying Affidavit and the contents thereof they say are untrue.
  6. The Respondent filed a Supplementary affidavit sworn by Quresh Ahmed where he dissociates himself with the averments of the Replying Affidavit by Michael Muchiri. He goes on to state that the Respondent have always remitted to the Applicant the arrears of Shs. 90,000 in respect of monthly payments and Shs. 115,000/= being agency dues as and when they fell due. The schedule of payments has been attached to the Affidavit as QA-1.
  7. That they paid the said sums and as at December, 2015 only Shs. 23,045 was payable which was paid to a rival union which had served upon the Respondent check off forms. That this triggered a dispute between the parties who filed in Court a suit - ELRC No. 2066 of 2015 and have attached a Court Order to that effect marked as QA – 3.
  8. The Applicant in their submissions reiterates the contents of their Affidavits and seeks for the application to be allowed as drawn.
  9. The Respondent in submissions state that it is a Government Parastatal, governed by the provisions of the state Corporations Act, Cap 446 of the Laws of Kenya. That its substantive mandate in its day to day operations as well as its income and expenditure come from the parent Ministry of Tourism to its board of management. The General Manager who is responsible for the day to day running of the Respondent is answerable to the said Board who in turn answer to the ministry. They state that their mandate is subject to restrictions they can do little about.
  10. The Respondent admit that there is a Court Order for stay of execution as they settle the sum in installments which they did and as such the General Manager acting on behalf of the Board of the Respondent has done what he can under the circumstances notwithstanding that there are no

financial provisions made and approved by the parent Ministry as well as the Salaries & Remuneration Commission and furthermore that the Court Order came after fiscal allocations had been made and therefore the General Manager had to apply, wait for approval and receive his budget in the new financial year. If at all the General Manager was in contempt, they submit that he would not have remitted any dues for the employees.

11. The Respondent prays for the Application to be dismissed because they have not disobeyed the Court's Orders.

12. Having considered the submissions of both parties, the issue for determination is whether the Respondents have committed any acts in contempt of this Court's order dated 3.8.2015. On 3.8.2015 this Court made an order in the following terms:

1. ***That the arrears owing be paid as proposed by the Respondent Kshs.90,000/= per month as agency fees and Kshs.115,000/= as Union dues al totaling 205,000/= be made with effect from July 2015 until payment in full.***
2. ***That the monthly accruing charges to be paid as when they fall due and the two months arrears already accrued be paid by end of august 2015.***
3. ***That in default execution to issue.***

13. The Respondents aver that they have obeyed this order to the fullest and paid as their Appendix AQ 1.

14. Appendix AQ1 shows a schedule of payments apparently made from June 2015 to December 2015 whereby agency fees and some union dues were paid. Total paid is Kshs.1,131,414/=. As per this Court's ruling of 30.6.2015 the arrears payable = 2,539,580/=. If the Claimant are to pay as directed by Court on 3.8.2015, then the Respondent should as of today have paid 205,000 x 10 months = 2,050,000/=.

15. The schedule thus shown to Court Appendix AQ1 does not show payments as directed by Court.

16. Furthermore, the Court also directed the Respondents to continue paying agency fees and union dues as they accrue from that day.

17. Appendix A – attached to Respondents submissions show further payment with effect from 1/9/2015 to March 2016 totaling 637,806/= for union dues as ordered by Court. Total collected = 1,769,220/= which is still below the 2,050,000/= mark as of today.

18. The Respondents have also not shown Court that they have paid other than the arrears also paid monthly union dues and agency fees as they fall due month after month.

19. It is therefore apparent that the Respondents have not met their obligation as ordered by Court and if they have, the documents of payment should have been produced in Court.

20. The Respondents aver that the Respondent being a state Corporation is restricted in what they can do because they follow strict budget allocations and cannot pay what is not budgeted for.

21. The Respondents have submitted that the Court order came after fiscal allocation had been made for the year 2016 – 2017. This is not true as the budget process for year 2016 – 2017 is now awaited.

22. I have considered the submissions of the parties and it is this Courts' finding that the Respondents are not being candid with this Court in terms of what they have paid or have not paid to the Respondents. The excuse of the budgeting process notwithstanding, the Respondents should show

Court that they have now provided in the future budget process the moneys in issue and must continue to remit agency fees and union dues when due as this is not directly from the budget process.

23.I therefore order that the Respondents General Manager should appear before this Court personally to show the measures put in place to pay the arrears as ordered by Court and also show the remittances so far made and those pending to be paid and why.

Read in open Court this 21<sup>st</sup> day of April, 2016

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Muchua for Claimant

No appearance for Respondent