



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI
CAUSE NO. 59 OF 2014
AND MISCELLANEOUS CAUSE NO.5 OF 2014

**UNION OF COMMERCIAL FOOD AND ALLIED WORKERS.....CLAIMANT AND
APPLICANT**

VERSUS

JATOMY ENTERPRISES LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Thursday, 14th April, 2016)

RULING

The claimant filed a notice of motion on 12.11.2015. The motion was brought under section 12 of the Employment and Labour Relations Act, section 5 and 6 of the Judicature Act, Cap. 8 Laws of Kenya and all other enabling provisions of the law and pursuant to leave granted by the court on 28.10.2015. The claimant prayed for the following orders:

1. That the application is certified as urgent and be heard ex-parte in the first instance.
2. That Mr. Jackson Kibuyi Wainaina is ordered to personally appear in court and continue to do so until the matter is heard and determined.
3. That the honourable court be pleased to cite Mr. Jackson Kibuyi Wainaina and have him jailed for contempt of court for a period of six months or such period as the honourable court may deem fit and just.
4. The director general of police or his authorised officers do assist in execution of the honourable court's orders.
5. The honourable court do issue such orders and give such directions as it may consider fit and appropriate to meet the ends of justice.
6. The respondent is condemned to pay costs of the application.

The application was supported by the affidavit of James Muriuki Njue, the supplementary affidavit of James Muriuki Njue filed on 01.04.2016 and the following grounds:

- a. The respondent has disobeyed the orders by Abuodha J. in the ruling delivered on 22.05.2014 in Cause No. 59 of 2013 between the parties that the respondent commences deductions of union dues forthwith from those unionisable employees who have been verified to have voluntarily signed the check off sheets and further that the respondent in accordance with the provisions of section 56(1) and 56(2) permits the applicant to access the premises for purposes of recruiting union members. That the court further directed that a recognition agreement be entered into within 60 days of attainment of simple majority as stipulated under section 54(1) of the Labour Relations Act.

b. The respondent has disobeyed court orders by Ongaya J. in the judgement of 31.07.2015 between the parties as follows:

(1) Parties to comply with the orders as given on 23.05.2014 in cause 59 of 2013 at Nyeri between the parties and any disobedience may be handled in accordance with the relevant law.

(2) The respondent is hereby restrained by itself or its employees or agents from victimizing, intimidating, coercing, harassing, terminating, dismissing, forcing withdrawals from the union, transferring or disciplining the claimant's members in employment of the respondent on account of their trade union membership.

c. The orders were made in presence of the parties.

d. Continued disobedience of the orders has brought the dignity of the court into disrepute.

e. The members of the claimant will continue to suffer prejudice unless the court intervenes by making the orders as prayed for.

The respondent opposed the application by filing on 08.03.2016 the replying affidavit of Jackson Kibunyi Wainaina sworn on 08.03.2016.

The court has considered the parties' respective submissions. It is the respondent's preliminary objection that the application is an abuse of court process because it is not clear how it was filed, at the same time, in the two already decided cases. The court finds that the decided cases were separate and were not consolidated at any stage and as submitted, it was indeed an abuse of the court process for the applicant union to title the application as being filed in the two decided cases which had never been consolidated. Further, the claimant filed the application with a complete statement of claim as though this was a fresh suit but which was not the case. The two irregularities were indeed fatal defects as they did not comply with the prescribed procedures for filing contempt applications before the court. It is that Miscellaneous Cause No. 5 of 2014 was found by the court to have been *res judicata* and that the present application was purportedly filed in those proceedings is clearly an abuse of court process.

The court has considered that the court orders were directed at the respondent and the claimant has not established why the contempt application was brought out against the respondent's chief executive officer without having to move against the respondent for the alleged disobedience.

For the foregoing reasons, the court finds that the application for contempt shall fail.

In conclusion the application is dismissed with costs.

Signed, dated and delivered in court at Nyeri this **Thursday, 14th April, 2016.**

BYRAM ONGAYA

JUDGE