



REPUBLIC OF KENYA
EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

MISC. ELRC CASE NO.2 OF 2016

(BEFORE D. K. N. MARETE)

***CONTEMPT OF COURT PROCEEDINGS IN RESPECT OF COLLINS
ODUMBA.....ACCUSED***

RULING

On the morning of 27th May, 2016, at about 1015 hours, we were treated to a now common spectacle during proceedings in court. In the middle of the first phase of the court's proceedings, mentions and allocation of hearings for the continuing matters, loud and continuous noises were heard from outside the court room. It was clear that this was a chat between two persons. The volume and continuity of this noise forced the court to stop its proceedings as this was not possible or practical.

The court made immediate and appropriate intervention by issuing instructions that the culprits of the noise be summoned and brought to court. Instructions were issued to the Court Assistant, one, Emmanuel Juma Maelo who immediately left court to execute the order and summons of court. The court and its litigating clientèle were left to await the outcome of this exercise.

A while later, one of our senior officers, Esther Maritim was brought to court. I ordered that she be sitted at the back of the public sitting rolls of the court. It would appear that these instructions were never fully complied with but she nevertheless sat in court. On enquiry as to why the other one had not come, the answer was; *“he has refused.”*

This answer was as perturbing as it was astonishing and disturbing. I called for an adjournment and directed the acting Executive Officer to have the noise making person arrested and brought to Court. A report later was made that compliance was had and the court convened only to find that no action had taken place on the instructions for arrest and arraignment to court. Another adjournment ensued.

Later, I was given another report that action had been taken and the officer was in court. The court resumed whereupon I charged the officer with contempt of court and ordered his custody in the police cells at Kericho Police Station to await trial on 30th May, 2016 at 900 hours.

On 30th May, 2016, the accused, who I now realized was a court staff or officer was brought to court for hearing at 1100 hours. Enquiries on the delay never yielded any fruitful results: This appeared like is custom. On production, the officer was taken through the motions of reading out of the charge and plea. He was thereon discharged in readiness for hearing on the following day, 31st May, 2016.

On 31st May, 2016, the accused officer was represented by a Mr. Ochieng. He pleaded not guilty and the matter proceeded to trial with Mr. Juma, Court Assistant testifying in support of the prosecution. This

was after quelling on request for adjournment on the part of the counsel on grounds that he had just been instructed and would not be able to effectively without the facility of witness statements which he applied for. A compromise was reached with a view to proceedings conditional upon stoppage when this factor became a stumbler.

PW1 – E.J. Maelo duly affirmed testified and stated that he sat in court as court assistant on Friday, 27th May, 2016 in the morning. He further testified that he took instructions to summon (read call) persons who were making noise outside the court room. He duly took up the assignment.

He further testified that when he got outside the courtroom, he saw two of his colleagues and informed them that they were making noise and had been summoned to court. These were Esther Maritim and Collins Odumba. One of them, Esther Maritim, complied and came to court whereas the other did not. He reported to court and the court did not ask why the other one had not come.

On cross-examined, he testified that he told accused officer to report to court but he declined. Counsel for the accused officer, Mr. Ochieng, sought time to prepare his case to facilitate an interrogation and cross-examination of this witness. He called for a one (1) week adjournment. The court thereon directed as follows;

- i. *The accused be and is hereby awarded leave to access the court file with a view of satiating the issue of witness statements, charge and particulars of charge.*
- ii. *Hearing on 02-06-2016 at 1100 hours.*

On 2nd June, 2016, hearing proceeded with the cross-examination of the witness. He testified that he stood at the corridor when he called the accused officer. This was next to the door of the High Court Registry. The accused officer was about twenty (20) feet and at the junction that separates the two corridors. There were the only two officers/colleagues on the corridor and he did not see a police officer. He uttered as follows *“Please the two of you come in court. You are making noise.”*

There was no other prosecution witness and the court pronounced that it wished to take a civil approach to the proceedings and allowed the contemnor to do his case in defence.

DW1- Collins Oluoch Odumba, the accused officer was called to testify. He testified that he is an employee of the judiciary as a Senior Court Assistant. On 27th May, 2016 he was at work. At about 1010 hours he went to the accounts

office to follow up payments for registry staff. At the material time to these allegations, he was almost entering the criminal registry. Mrs. Maritim was in between him and Mr. Maelo. There was a prison warder whom he had just passed. He had greeted Mrs. Maritim as he walked past but these greeting would not qualify for noise.

At the down step, he heard a hissing noise and Mr. Maelo say *“You Come”* as he entered the registry. He now stood by the High Court Criminal Registry some twenty – five metres away. The officer further testified that he did not think the call referred to him and had he known that this was the case, he would have responded immediately.

The officer further testified that he was not specifically informed of the goings on or incident. Two minutes later, the same Mr. Maelo, informed him that he was required by the Judge and indeed, he reported to the Judge's chambers but was not allowed in.

“I do not know what transpired between the initial calling by the judge and this time. I would not decline, refuse or in any way ignore a summon by court. That is all. That is all. I now wish to call Mrs. Maritim to testify in this matter.”

There was no cross-examination of the witness

The defence called DW2- Esther Chepkurui Maritim who testified that she works for the judiciary at Kericho law Courts. On 27th May, 2016 at the material time to this case she had left her office from the washrooms. After this, she witnessed many people in the corridors. These included the contemnor and two police officers. She met the contemnor at the junction to this court and he greeted her softly.

DW2 further testified after she had received greetings from the contemnor when Mr. Maelo called. He said “*mnaitwa*”. He was not specific as to who was being called. At this time, the contemnor was not there. She meekly followed Mr. Maelo without question. She did not know why she was being called. She thought she was being called to do some interpretation in court.

DW2 further testified that he had known the contemnor for five (5) years and he is obedient. He does not even look defiant and that any other person in the corridors who have thought he was being called. This closed the defence case.

At the conclusion of the defense testimony, Mr. Ochieng submitted that taking into regard the evidence adduced in the matter, it was obvious that there was a breakdown in communication. It would therefore be harsh to find a case of contempt for the accused in the circumstances, especially when the message meant for him was broadcast to many others.

It was counsel's further submission that his client did not ignore the summons of court as he is an employee of the judiciary and this was part of his work. The message from court was distorted and was enough to cause confusion. The court would be hard put to make a finding that the accused declined to attend court as required. The summons of court, like any other orders ought to be specific in nature to qualify for them to be disobeyed. One cannot obey an ambiguous order or direction that would have applied to any other person in the corridor or Mrs. Maritim.

Mr. Ochieng further submitted that his client's willingness to obey directions on orders is demonstrated by his visit to the Judge's Chambers when he was specifically summoned to do unambiguously. The accused is remorseful if indeed he offended the court by his unintended action.

What is contempt of court and why is it bothersome?

Black's Law Dictionary (Ninth Edition) defines contempt of court as:

“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”

The law and practice on contempt of court has come out clearly that the essence of contempt proceedings is not to assuage the feelings of the judge or install the dignity of the court. Far from this, it is intended to safeguard the supremacy of the law. In the authority of **Johnson vs Grant, 1923 SC 789 at 790** Lord

President Clyde stated that;

“...The law does not exist to protect the personal dignity of the judiciary nor the private rights of parties or litigants. It is not the dignity of the court which is offended. It is the fundamental supremacy of the law which is challenged.”

The reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed.

A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is

issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.

In the authority of **Kenya Tea Growers Association Vs Francis Atwoli and 5 Others [2012] eKLR** Lenaola J cited with approval the case of **Clarke and Others Vs Chadburn & Others [1985] 1All E.R (PC), 211** in which the court observed that;

“I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal...even if the Defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it.”

This clearly illustrates why courts will not sit and watch in the wake of contempt of court. Disobedience of court orders and or summons would in total disparage the rule of law and lead to anarchy. This would be too much for any of us to await and face. Judges and judicial officers may risk being accused or seen to defend their lofty positions in this exercise, but this would be worth every coin bearing in mind the possible alternatives.

And there we are. Back to the local scenario. From the evidence of the witnesses in this matter it is clear and obvious that the case has demonstrably collapsed on its face. It is a non starter having been premised on falsity feed to court by the court assistant, the courier and articulating officer of the court summons. He on oath and in testimony denied, or do I say recanted the original report made to court on the material day which was the mother of these events: *“He has refused.”* This is made from the witness box.

The matter is as it were lost. It is not sustainable in the midst of such overwhelming evidence against a case for contempt of court. The court on the onset therefore made the following orders;

- i. *That this matter is dismissed for want of proof and evidence.*
- ii. *That a comprehensive ruling on the matter shall be made on 08-06-2016 at 900 hours.*
- iii. *The accused officer/contemnor is set at liberty to partake to the balance of his life*

In this final stretch of this unwarranted misadventure, one picks issues with the conduct and management of Judiciary administration. Could this episode and circumstances have been avoided in the first instance? To answer this, one is forced to look back at the training of judiciary staff with a view to empowering them in the performance of their duties. Are there gaps and loopholes in this? Why would our member of staff choose to lie in a court he serves as a means of his livelihood in broad day light? *Something is rotten in the gardens of Denmark* (William Shakespeare, Hamlet.) This could be a portender of worse things to come.

I am of the view that we need to revise our strategy at training and psyching of our workforce for duty. In as much as this is a general lethargy in the entire public service and society, we are forced to relook our positions on this. As is clearly demonstrated by the impact of this case, it is an area we can ill afford to ignore. Staff training should be thorough, impactive and effective so as to bring out dependable servants of the people of Kenya. Any officer of the court (read judiciary staff) and even the public are expected to clearly understand the meaning and implications of court summons. This is more so with court orders and directions. From the onset, all court staffers should be warned of the far reaching implications of these and the entirety of court process. This is besides their general set out of conduct at work.

How then do we have a court assistant who also doubles as a pathological liar and even lies on oath? Where does this lead us. It is sad that this happened and

this reflects badly on the calibre and commitment of staff manning our court system and perhaps even the entirety of the judiciary. It further raises issues on their recruitment, training and continuous education. It also raises had questions on the efficacy of court administration in ensuring effective service, competencies and accountability. This must be addressed and now.

Without appearing to lead evidence from the bench, let me say that his was an isolated episode of people shouting in the court corridor during court proceedings. Litigants and all are witnesses that this is something they have learnt to live with. We have only intervened in very extreme and unbearable situations. To be precise, this was the fourth episode where direct intervention was made.

The issue had been variously reported to the judicial officer in charge of the station to no avail. Who is in charge here? The chief administrative officer (read C.E.O) of Kericho Law Courts is the Senior Principal Magistrate, one, George Ong'ondo. What tale of expedient court administration does this portray? What are our levels of leadership in this sector?

Hard questions: Hard answers. This is an indicator of a precarious situation where officers suffering massive porosity are left to take charge of very serious matters. Matters, to say the least, of life and death. This is serious. This is an indicator of paying lip service to the very pertinent issue of public service and public administration.

I with nostalgia remember the echo and reverberations of Father Donders as he delivered his lecture at the Carrey Francis Memorial Lecture Theater in the seventies: *Why should the innocent suffer?* This question is abound to date.

Father Donders, the Professor of philosophy made various directional answers to this. I may not specifically recall his actual answers but I posit that the innocent continue to suffer due to human frailty. We are agreed on downloading to our

last ebb. We have abandoned and lost all. Duty and responsibility are foreign ideology and incomprehensible languages to us. We worship ease and convenience. The innocent continue to suffer.

This all times debate of philosophy was recently revisited by George R. R. Martin in his master piece, **A Game of Thrones, Harper voyager, 2011 at page 613** as follows;

“Rhaenys was a child too. Prince rhaegar’s daughter. A precious little thing, younger than your girls. She had a small black kitten she called Balerion, did you know? I always wondered what happened to him. Rhaenys liked to pretend he was the true Balerion, the Black Dread of old, but I imagine the Lannisters taught her the difference between a kitten and a dragon quick enough, the day they broke down her door.” Varys gave a long weary sigh, the sigh of a man who carried all the sadness of the world in a sack upon his shoulders. . . “The High Septon once told me that as we sin, so do we suffer. If that’s true, Lord Eddard, tell me ... why is it always the innocents who suffer most, when you high lords play your game of thrones? Ponder it, if you would, while you wait upon the queen. And spare a thought for this as well: The next visitor who calls on you could bring you bread and cheese and the milk of the poppy for your pain ... or he could bring you Sansa’s head.” (underlining mine.)

We would understand the plight of Varys. The million dollar question that has disturbed philosophy is why the innocent would continue to suffer when the high lords and them all play their game of thrones? The world, like the accused officer in this cause, continues to suffer whereas we sit in glory in our ivory towers unconcerned. Why would this continue to happen? Human failure and despondency is the big answer.

This matter and its underlying publicity is sad and unfortunate for all of us. How do we subject an innocent officer to such macabre punishment and other possible consequences due to the negligence of

recalcitrant colleague. What do we make of the mammoth outcry and quisitivity this caused in judicial circles? Is this a common occurrence even in unpublicized matters touching on our operations? Does this affect service delivery to the Kenyan public. Are we merely

crying for ourselves and our own? Are we treating the symptoms?

I wish to bow out of this misadventure with apologies to the Kenyan public and Mr. Odumba in particular. Personal liberty shall never be assumed or taken for granted whatsoever. This is sacrosanct. I do this on my behalf and that of the entire judiciary family and by extension the public service in general. I beseech our main stakeholders, the Kenyan public to always raise issues in the event of maladministration and violation of the rights in the performance of our duties. Our work is not a favour as such: It is fulfillment of service and duty for which we are very well paid.

Let me close at that. I go on to reiterate my earlier order that the charge is dismissed and the accused officer set at liberty to enjoy the balance of his life.

Delivered, dated and signed this 30th day of June 2016.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Ochieng for the Accused officer.