



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NO. 399 OF 2015

(Consolidated with cause no. 400 of 2015)

ALFONSO KATHEKA MUNYALI.....1ST CLAIMANT

JEREMIAH NYABERI ICHWARA.....2ND CLAIMANT

VERSUS

THE COUNCIL OF THE KENYA ..

SCHOOL OF GOVERNMENT.....1ST RESPONDENT

THE DIRECTOR GENERAL OF THE KENYA

SCHOOL OF GOVERNMENT.....2ND RESPONDENT

DR. TOM WANYAMA OUND.....3RD RESPONDENT

PRISCA MARY OLUOCH.....4TH RESPONDENT

RULING

Introduction

1. The application before the court is the Notice of Motion dated 20.4.2016 brought by the claimants. It seeks for an order of committal to civil jail of the 1st respondent herein and Dr. Ludeki Chweya, the 2nd respondent herein for such a period as the court may deem fit and just in addition to payment of a fine.
2. The grounds upon which the Motion brought is that the said respondents are in deliberate breach of this court's order dated 31.7.2015 and which allowed the claimants herein to continue discharging the duties of Campus Directors of Kenya School of Government (KSG) Mombasa and Matuga Campus respectively, and to continue enjoying their full benefits. According to the claimants, they are entitled to enjoy the benefits of a Campus Director under KSG 2 in the KSG Terms and Conditions of Service (KSG TCS) manual at section 33. That all the other Campus Directors Countrywide are enjoying the salaries and benefits accruing to the KSG Scale 2 plus a

- vehicle but the claimants have been deliberately excluded from all in willful and blatant disregard of the said court order.
3. The Motion is supported by Affidavits sworn by the claimants on 20.4.2016. The gist of the affidavits is that the 1st and 2nd Respondents have disobeyed the court orders by failing to pay to the claimants their rightful salary and allowances and to allocate them vehicles as their rightful benefits as Campus Directors for the KSG. That the beneficiaries of the 1st and 2nd Respondents' contempt of court are the 3rd and 4th Respondents who continue to receive the benefits of the Campus Directors yet they are not discharging any duties of Campus Directors.
 4. The respondents have opposed the Motion by their respective Replying affidavits sworn on 11.5.2016 and 12.5.2016. The gist of the replying affidavits is that the respondents have fully complied to the court orders dated 31.7.2015 by allowing the claimant to continue discharging the duties of Campus Director of their respective Campuses and they are being paid their full benefits under their contract of employment. That the issues of whether or not they are the substantive Campus Directors of Mombasa and Matuga Campuses and whether or not they should earn the benefits under KSG 2 under the KSG TCS form the substratum of this suit and it should await the trial.
 5. The Motion was disposed of by written submissions which were highlighted on 1.7.2016.

Claimants' case

6. Mrs Kipsang learned counsel for the claimants/Applicants relied on the applicants supporting affidavits and her written submissions in arguing the court to find in favour of the applicants. She also cited several authority in supports of her submission that the 2 cited respondents should be punished for violating the order dated 31.7.2015. In summary she submitted that her clients had since the securing of the conservatory orders been denied their full benefits as the substantive Directors of their respective KSG campuses including salary, allowances and official car. That discharge of their duties has been interfered with by the cited respondents through recruitment of Deputy Campus Directors without involving the claimants.

1st and 2nd Respondents' case

7. M/S Luta, Learned State Counsel submitted for the 1st and 2nd Respondent that the order by the court dated 31.7.2015 is clear and unambiguous and that her client has fully complied with the same. That the claimants have continued to discharge the duties of Campus Directors of Mombasa and Matuga respectively without any interference by her clients. That the claimants also continue to receive the same salary they were receiving before the said order by the court and as such there has not been any violation of the order. That the claimants are yet to agree with the 1st Respondent about their terms of service as provided for under section 21 of the KSG Act. She urged that the issue whether the claimants are entitled to the benefits provided under KSG Scale 2 is a triable issue which should await trial and as such cannot be enforced at the interlocutory stage. She prayed for the motion to be dismissed.

3rd and 4th Respondents' case

8. Mr. Mwenesi, learned counsel for 3rd and 4th respondents likewise found no merits in the motion and prayed for the same to be dismissed. He agreed with the submissions by M/S Luta that the issue whether or not the claimants should earn the salary under KSG Scale 2 of the 1st Respondent's TSC is the substratum of the dispute herein and should first go to full trial. He however differed with Mrs. Luta by submitting that the order in issue was ambiguous on what salary or benefit should be paid to the claimants pending trial. He denied that his clients were beneficiaries of the alleged contempt of court by the 1st and 2nd respondents and submitted that his clients have not interfered with the claimants' discharge of their duties in their respective Campuses. The two defence counsels cited numerous judicial precedents which are relevant to the matter of contempt of court.

Analysis and Determination

9. There is no dispute that this court made conservatory orders in the suit herein on 31.7.2015 and all the cited respondents made aware of the same. There is also no dispute that the said respondents fully understood the said orders and never challenged them either by review or appeal. The said orders are therefore still in force pending trial and determination of the suit. The issues for determination are:-
- a. **Whether the order dated 31.7.2015 is ambiguous**
 - b. **Whether the cited respondents have deliberately disobeyed and disregarded the said order.**

Ambiguity

10. The order in dispute is contained in the ruling of this court dated 31.7.2015 which stated as follows:

“a) That injunction is hereby issued restraining the respondents, their agents, servants or assigns from terminating, removing, replacing, dismissing and/or employing the claimants herein, Alfonso Katheka Munyali and Jeremiah Nyabari Ichwara from their current position as the Directors of Kenya School of Government Mombasa Campus and Matuga Campus respectively and/or committing any breach of the contract of employment against the claimants herein pending the hearing and determination of the suit herein.

b) For avoidance of doubt, the claimants herein Mr. Alfonso Kitheka Munyahi and Jeremiah Nyaberi Ichwara shall continue to discharge the duties of the Director of the Kenya School of Government Mombasa Campus and Matuga Campus respectively with full benefits pending the hearing and determination of this suit.

c) Costs to the claimants.”

11. The orders were made against the 1st and 2nd Respondents and they have deposed, and their counsel has submitted that the orders were clear and unambiguous and they fully complied with them. That they have not installed the newly appointed Campus Directors and they have allowed the claimants to continue discharging their duties as Campus Directors without any interference. That they have also continued to pay them their respective salaries as they were earning before the said conservatory orders pending the hearing and determination of the suit.
12. The 3rd and 4th respondents are however alleging that the foregoing orders were not clear and they are ambiguous. The claimant do not see any ambiguity in the orders because they were already Campus Directors before the orders were made on 31.7.2015 and the respondents have treated them as such through various correspondences. That they have been discharging the duties of Campus Directors and all the respondents have acknowledged that fact. The claimants therefore contends that they should be paid salary and allowances under KSG TCS scale 2.
13. I have perused the order made by the court and the one extracted by the claimant and served upon the cited respondents and just like the claimants and the cited respondents, found that the order is clear and unambiguous. It preserved the status of the claimants as Campus Directors of the KSG Mombasa and Matuga respectively pending trial and determination of the suit.
14. I also find that the order was also not ambiguous in the directions that the claimants were to continue discharging the duties of the Campus Director of their respective Campuses with full benefits. What the court did by the said directions was to prevent creation of a vacuum in the leadership of the two campuses and as such the claimants were to continue heading the campuses and continue drawing their salaries pending hearing and determination of their status in the KSG which is the substratum of the suit herein. The salaries to be drawn by the claimants are the salaries which they were drawing before the order dated 31.7.2015 and which were protected by the said order pending the determination of their status in the KSG establishment.

Disobedience to the order

15. The claimant have contended that the cited respondents have disobeyed the order dated 31.7.2015 by failing to pay them the same salary as the other Campus Directors under salary scale KSG 2 under the KSG TCS. The respondent have denied that they are in breach of the court order and maintains that the claimants are discharging the duties of Campus Directors for their respective KSG Campuses and they are drawing the same salaries they were receiving before obtaining the conservatory order. They have annexed correspondences and payslips to confirm their foregoing contention.
16. The court has considered the orders sought in the Notice of Motion by which the conservatory order were sought. There is no dispute that there was no order sought by the claimants to be paid the salary they are now seeking under salary scale KSG 2 under the KSG TCS. The respondents have submitted that a determination of the foregoing issue of whether or not the claimants should draw the salary under scale KSC 2 must await the trial. I agree with the respondents that the issue of what is the claimant's rightful salary as Campus Directors should await the trial. The answer to that question will flow naturally from the determination of the claimant's status in the school's establishment after trial.
17. At the risk of repetition, I find and hold that the conservatory order I made on 31.7.2015 was basically to preserve the status quo pending the hearing and determination of the dispute herein on merits. The court was not asked for and never granted any extra benefits to the claimants than they were getting before the orders. Alleging otherwise is pretentious and farfetched.
18. So are the respondents in contempt of my orders dated 31.7.2015? The answer is no. They have complied with the orders as sought and granted to the claimants. I eschew from commenting on the alleged benefits to 3rd and 4th respondents, failure to allocate motor vehicles or recruitment of Campus Deputy Directors as form of interference with the claimants' discharge of duties as Directors. In my view, these are new matters which seem to involve persons who are strangers to the suit and who may be prejudiced by any comments which I may make without hearing them.

Disposition

19. For the reasons stated above, Notice of Motion dated 20.4.2016 is dismissed. Costs to the respondents.

Signed, Dated and Delivered at Mombasa this 15th day of July 2016.

ONESMUS MAKAU

JUDGE