



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 1800 OF 2015

KENYA NATIONAL PRIVATE SECURITY WORKERS' UNION ..CLAIMANT/APPLICANT

VERSUS

P.G. SECURITY LIMITED.....RESPONDENT

RULING

[1] The Claimant/Applicant seeks through the notice of motion application dated 31st May 2016 seeking leave to commence contempt of Court proceedings against the general manager of the Respondent for disobeying the court order given on 9th October 2015. The application is expressed to be under Section 12 of the Industrial Cort Act 2011, Section 5(1) of the Judicature Act cap 8 laws of Kenya nd Section 3A of the Civil Procedure Act, Order 22 Rule 28 of the Civil Procedure Rules 2010 and all enabling provisions of the law. The application sought that the general manager be summoned to Court to show cause why he should not be punished for contempt and that the said general manager be condemned to serve a civil jail term for 6 months for contempt. The grounds on which the motion was expressed was that the Respondent had failed to comply with an order of the court issued by the court on 12th October 2015. The application was supported by the affidavit of Isaac G. M. Andabwa sworn on 31st May 2016 in support of the motion. A supplementary affidavit was sworn by Isaac G. M. Andabwa on 19th January 2016 and filed on 20th January 2016.

[2] The Respondent filed its replying affidavit sworn by Joel Atuti on 30th November 2015 and a further affidavit sworn by Yogesh Pabari on 25th July 2015. The two affidavits were to the effect that the Respondent had not disobeyed Court orders.

[3] The parties opted to canvas contempt of court application through written submissions and the Claimant/Applicant filed its submissions on 22nd February 2016 while the Respondent did not file any submissions. In its submissions, the Claimant submitted on issues that were not in the motion dated 31st May 2016 and instead urged the 9th October 2015 motion which was filed contemporaneously with the suit.

[4] The issue that was initially to be determined by the Court is the contempt application of 31st May 2016 which was the basis upon which summons had been issued against the director of the Respondent. The general power to punish for contempt is found in the Judicature Act cap 8 Laws of Kenya. The relevant Section provides as follows:-

5. (1) *The High Court and the Court of Appeal shall have the same power to punish for contempt*

of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.

(2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.

[5] The power of this Court to punish for contempt is as provided for. The term *contempt of court* is based on the duty to prevent attempts to interfere with the administration of justice. It is a well-established principle that the jurisdiction of a court to punish for contempt arises out of the inherent jurisdiction of the court to enforce its own orders. To prove contempt, the accuser or prosecutor must prove the following four broad elements of contempt:

- (i) that there is in existence of a lawful order,
- (ii) the person accused of contempt had knowledge of the order
- (iii) the person accused of contempt had ability to comply with the order; and finally
- (iv) the person accused of contempt failed to comply with the order

[6] These ingredients must all be in place. The order must be lawful and the alleged contemnor must have had knowledge of the order and failed to comply with the order in spite of having the ability to comply with the order. The proof required in matters such as this is slightly above balance of probabilities but below proof beyond doubt standard applicable in criminal cases. There are occasions when contempt proceedings may take place without leave but such are limited to the contempt *in facie curiae* (contempt in the face of the court).

[7] The order alleged to have been disobeyed is annexed to the application dated 31st May 2016. There is no proof that the ingredients precedent to issuance of an order for contempt were met. The first ingredient is met. There is in existence of a lawful order. The second, third and fourth ingredients are that the person accused of contempt had knowledge of the order; the person accused of contempt had ability to comply with the order; and finally, the person accused of contempt failed to comply with the order. The lack of proof of service is adequate to dispose of the motion but nevertheless, the Court notes that there is no proof that the person served (if any) had the ability to obey and declined to obey a lawful order. The upshot of the foregoing is that the motion fails dismally and is dismissed with costs to the Respondent.

Orders accordingly.

Dated at Nairobi this 29th day of July 2016

Nzioki wa Makau

JUDGE

Delivered at Nairobi this 16th day of August 2016

Linnet Ndolo

JUDGE