



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION NO 45 OF 2012

PAUL NJOROGE MWANGI.....PETITIONER

VERSUS

PERMANENT SECRETARY INTERNAL SECURITY

AND PROVINCIAL ADMINISTRATION.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

RULING

1. This ruling flows from the Respondents' application brought by way of Notice of Motion dated 1st July 2016 seeking the setting aside of the orders issued by the Deputy Registrar of this Court on 14th June 2016, committing the 1st Respondent to civil jail.

2. The application which is supported by the affidavit of Anne Wanjiku Mwangi, Advocate is based on the following grounds:

- a) That the Notice to Show Cause dated 20th November 2015 expressly offends the provisions of Order 29 of the Civil Procedure Rules as well as Section 21(3) & (4) of the Government Proceedings Act;
- b) That the orders were issued in disregard of the reasonable explanation offered by Counsel for the Respondents;
- c) That the Respondents are law abiding citizens and are committed to settling the matter and only await the Petitioner to submit requisite documents to enable settlement of the claim;
- d) That the 1st Respondent is agreeable and willing to settle part of the claim in the amount of Kshs. 500,000 as compensation and unpaid salary from 1991 to 1995;
- e) That the issue of pension and gratuity is the subject of an appeal in the Court of Appeal which is yet to be determined.

3. In his grounds of objection filed on 12th July 2016, the Petitioner states that this Court has no jurisdiction to vary the orders of the Deputy Registrar on the basis of the current application which is neither a reference nor an appeal. The Petitioner invites the Court to find the Respondents in contempt of the orders issued on 30th April 2013.

4. The Petitioner adds that the Respondents have not only refused to pay the uncontested amount but have also declined to calculate pension and gratuity as ordered by the Court.
5. With regard to the appeal referred to by Counsel for the Respondents, the Petitioner states that the notice of intention to appeal was filed on 21st March 2016, the same day the Notice to Show Cause was heard. The application to the Court of Appeal for leave to file appeal out of time was filed on 24th March 2016. The Petitioner takes the position that this is an attempt to further delay payment of the decretal amount.
6. The issue for determination in this application is whether the Respondents have made out a case for setting aside of the orders issued by the Deputy Registrar on 14th June 2016.
7. The Respondents explain the delay in settling the claim on account of the Claimant's failure to provide a certificate of costs as required under Section 21 of the Government Proceedings Act.
8. The Respondents further state that they have appealed against the portion of the judgment relating to pension and gratuity.
9. In response Counsel for the Petitioner states that he drew a certificate of costs in June 2015 which the Deputy Registrar declined to sign as the figure for pension and gratuity which the Respondents had been directed to tabulate was missing.
10. Regarding the intended appeal, Counsel submitted that the Respondents only filed a Notice of Appeal after the Notice to Show Cause had been filed which was way out of time and without leave of the Court. An application for extension of time had since been filed in the Court of Appeal but no further orders had been made.
11. I have considered the events leading to the current application and it seems to me that the Respondents have frustrated the Petitioner's efforts to access the fruits of his judgment at every turn. They failed to tabulate the award on pension and gratuity which is a prerequisite to the issuance of a certificate of costs on the basis that they intended to appeal.
12. Yet, they did not file a Notice of Appeal until they were jolted by the Notice to Show Cause. As things stand, there is neither an appeal nor an order for stay of proceedings. In the meantime, the Petitioner cannot get a certificate of costs for purposes of accessing his award granted way back in 2013 because the Respondents have failed to tabulate his claim on pension and gratuity.
13. In light of the foregoing I find no reason to interfere with the order issued by the Deputy Registrar on 14th June 2016.
14. The result is that the Respondents' application is dismissed with costs to the Petitioner.
15. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 23RD DAY OF SEPTEMBER 2016

LINNET NDOLO

JUDGE

Appearance:

Mr. Mugu for the Petitioner

Miss Mwangi for the Respondents