



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO.231OF 2015

JULIUS MACHARIA MWANGI.....CLAIMANT/APPLICANT

VERSUS

MUTANGA INVESTMENT LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 14th October, 2016)

RULING

The claimant filed the notice of motion on 23.05.2016 through Rajab & Mbogo Advocates. The application was brought under section 5 of the Judicature Act, Cap 8, Order 52 Rule 3 of the Rules of the Supreme Court of England 1965, section 3A of the Civil Procedure Act, Cap.21 and all enabling laws. The applicant prayed for orders:

1. That writs of attachment against the respondent's property, Mutanga Investments Limited, a body corporate created by statute do issue for contempt of court for willfully violating or disregarding the order given by the honourable court on 15.12.2015.
2. That Mrs. Rose Mimano, a director of the respondent, of P.O. Box 42352-00100 Nairobi, is committed to jail to such period as the honourable court may determine for contempt of court by willfully violating or disregarding the order made by this honourable court on 15.12.2015.
3. That the costs of and occasioned by this application and for obtaining leave thereto be paid by and provided for.
4. Any other order deemed expedient in the circumstances.

The application was based on the supporting affidavit by the applicant filed together with the application and on the following grounds:

1. That the court made and issued an order on the 15.12.2015 restraining the respondent and staying the disciplinary process brought against the applicant by the respondent.
2. The orders given on 15.12.2015 were served upon the respondent on 16.12.2016 and service was acknowledged.
3. The orders were extended by the court on 17.12.2015 in presence of the advocates for both

parties.

4. The effect of the orders and as extended was to stay disciplinary proceedings against the applicant.

5. Despite the court order, on 16.12.2016 the respondent's director one Rose Mimano knowingly committed acts in direct violation of the court orders by writing the letter of 16.12.2016 purporting to summarily terminate the applicant's employment retrospectively from 15.12.2015 and served the same upon the then applicant's advocates on record, Waweru Macharia & Company Advocates. The director's actions amounted to despise of the court's orders with a view to unfairly and procedurally punishing the applicant and an upfront to the authority of the court.

The respondent opposed the application by filing the replying affidavit of Rose Mimano on 08.06.2016 through Daly & Inamdar Advocates.

On 15.12.2015 the court ordered thus, **"3.That pending the inter-parties hearing, there be a stay of the disciplinary process and brought against the claimant by the respondent."**

The applicant's case is that the respondent has disobeyed that order. There is no dispute that the order was served on 16.12.2015. The orders were extended on 17.12.2015 till further orders by the court or till hearing of the application (fixed for 15.03.2016).

The 1st and main issue for determination is whether the order was disobeyed. In the replying affidavit by Rose Mimano sworn on 14.03.2016 and filed in the suit, at paragraph 23 it is stated that the order was served on 16.12.2015 after the respondent had already terminated the claimant's employment. At paragraph 23 of that affidavit it is stated that the orders of 15.12.2015 had been overtaken by events and indeed, the respondent had moved by the application dated 22.12.2015 to seek the setting aside of the interim orders.

There is no material on record to dispute the respondent's position that by the time the order was served on 16.12.2015, the termination of the contract of service had already issued. It is the court's opinion that once the termination decision was made, there was nothing left to be restrained on the part of the respondent and subject of the orders staying the administrative disciplinary proceedings as had been issued and concluded. It is clear that the extension of the orders on 17.12.2015 was misconceived and the respondent properly moved the court by the application dated 22.12.2015 to seek the setting aside of the interim orders. Accordingly, the court returns that the application for contempt filed for the claimant on 23.05.2016 will fail because the claimant has failed to establish the alleged violation of the said court orders.

In conclusion the application filed for the claimant on 23.05.2016 is hereby dismissed with orders as follows:

1. The costs of the application to abide the outcome of the suit.
2. The parties to take directions on further steps in the suit.

Signed, dated and delivered in court at Nyeri this Friday, 14th October, 2016.

BYRAM ONGAYA

JUDGE