



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 732 OF 2016

SHADRACK MUCHEMI MBAU.....APPLICANT

VERSUS

PRESBYTERIAN UNIVERSITY OF EAST AFRICA.....RESPONDENT

Mr B. S. Mugisha for Applicant

Mrs Muhuhu for the Respondent

RULING

1. By a notice of Motion application dated 19.5.2016 the applicant seeks for orders:-

- i. That this honourable court be pleased to find the respondent in contempt of court for disobedience of the court orders on the 4th May 2016.
- ii. That upon grant of prayer (i) above, the Honourable court be pleased to issue an order to commit the vice chancellor prof. Peter B. Kibas and Ms Elizabeth Muchoki contemnors to civil jail for a period of 6 months for contempt of court.
- iii. That the costs of the application be awarded to the petitioner/applicant.

2. The application is based on the grounds set out on the face of the application as follows;

- i. That on 4th May 2016 this honourable court issued an order suspending the suspension and the deployment of the petitioner/applicant.
- ii. That an order was issued to lift the suspension of the petitioner/applicant vide letter dated 7th April 2016.
- iii. That the respondent was duly served with the order on 11th May 2016.
- iv. That despite service and knowledge of the court orders, the Vice Chancellor Prof. Peter B. Kibas and Ms Beatrice Muchoki/Contemnors proceeded to restrain the applicant from reporting and accessing the office to work.
- v. That the petitioner/applicant enlisted the advocates advice after being sent away where after the

advocates wrote a letter to advise on consequences of disobedience of court orders.

vi. That despite attempting all possible means to ensure compliance, the Vice Chancellor Prof. Peter B. Kibas and Ms Beatrice Muchoki – Human Resource Officer/contemnors sent away the petitioner/applicant stating that the court cannot impose employees on them.

vii. That pursuant to the contemnors' actions he has failed to observe the rule of law by blatantly disregarding the orders of this honourable court thereby eroding its solemnity.

viii. That unless the court intervenes, the contemnors have purposeful intentions of subverting the course of justice by sustaining the applicant's suspension and failing to reinstate him.

ix. That in the interest of justice and for the purposes of upholding the dignity and honour of this honourable court, the applicant humbly prays that the orders sought herein be granted.

3. The application was served by one Martin Kimani Kirima on the Human Resource Officer Ms Elizabeth Muchoki but the process server was denied access to the vice chancellor Prof Peter B. Kibas. The Human Resource officer promised to pass the application to the Vice Chancellor. The return of service was filed in court on 26th July 2016. The summons and the order of the court dated 10th May 2016 but issued on 4th May 2016 were served on the office of the Human Resource Manager on 10th May 2016. The summons were returned duly signed and an affidavit of service by an authorised process server Mr Martin Kimani Kirima was filed on 16th May 2016.

4. Muhoho & Co Advocates entered appearance on behalf of the respondent on 19th May 2016. The hearing of the application interpartes was set for 23rd May 2016, the respondent having been given 14 days within which to respond to the application. The matter did not proceed on 23rd May 2016, the respondents having been served on 23rd May 2016. The matter was mentioned before me on 30th May 2016 but was adjourned to allow the respondent to file a response. The matter was set for hearing interpartes on 22nd June 2016.

5. On 22nd June 2016 the respondent advocate Mrs Mboga told the court that she had met the vice chancellor on 21st June 2016 and needed more time to file a replying affidavit. She sought a further 7 days for that purpose. The matter was set for interpartes hearing on 26th July 2016. On 26th July 2016 Mr Mugisha represented the applicant whereas Mr Mburu held brief for M/s Muhoho for the respondent.

6. Mr Mburu informed the court that the respondent had not filed a replying affidavit and sought three (3) more days to comply. Mr Mugisha opposed adjournment strongly on the basis that the respondent had been condoned on three previous occasions. That the application was brought on a certificate of urgency and needed to be dealt with as such. That the respondent had blatantly defied the order of the court and expected to continuously be indulged by the same court they had treated with contempt.

7. That unless the contempt is purged the respondent should not be granted audience by the court. The court refused the pleas by Mr Mburu for respondent for adjournment on the grounds that this was the third time the respondent sought indulgence on similar grounds. The application therefore remained undefended. Mr Mugisha for the applicant made submissions emphasizing that the respondent was properly served with the order of the court issued on 4th May 2016 and more than two (2) months down the line had refused to obey the court order.

8. That the applicant reported to work on 12th May 2016 at 8.30 a.m. and M/s Elizabeth Muchoki the Human Resource Manager refused her to return to her job stating that the court cannot impose employees on them. Mr Mugisha submitted further that he had sent several letters dated the 12th May 2016 and 16th May 2016 to the respondent and to the vice chancellor asking the respondent to comply with the court orders. The applicant was suspended from work on 14th April 2016 and the suspension persists to date and he cannot access his station. The applicant is not paid his salary while on suspension. The

respondent has further failed to file a response to the application and the same be allowed as prayed.

9. That the court ought not to condone an injustice visited on the applicant by the powerful respondent and the court should intervene on behalf of the weak since no one is above the law.

Determination

10. The application dated 19th May 2016 is unopposed. The particulars of contempt by the respondent through the named contemnors is clear. The two have blatantly defied the court order dated 4th May 2016 which was properly served on them. Though there was no personal service of the order on the vice chancellor Prof Peter B. Kibe and Ms Elizabeth Muchoki the Human Resource Manager there is no doubt that the order has been brought to their knowledge the same having first been served the office of Ms Elizabeth Muchoki vide Mr Collins an officer in that office. The same was followed by a letter dated 12th May 2016 sent to the respondent. The applicant reported to work on May 2016 but was refused to work by M/s Elizabeth Muchoki who stated that the court cannot impose workers on them. The letter of 12th May 2016 was a follow up to the incident and read

“.....you were served with a court order suspending decision to suspend and deploy our client however, our client has informed us that you have categorically stated that you will not obey the said court order and you infact went ahead to ask him to vacate the university premises. Please be advised that should you refuse to comply with the said order before close of business today we shall be compelled to move to court and apply for contempt of court”

11. The respondent was not moved by this letter and continues in the defiance of the court order. On 16th May 2016 Mr B. Mugisha wrote this time to the Vice Chancellor of the respondent reminding him to comply with the court order or else the applicant will move to court to apply for contempt. Not only has the respondent defied the court order staying the suspension of the applicant pending the hearing and determination of the application but have also failed to respond to the application that they be found guilty of contempt.

12. Section 20 (7) of the Employment and Labour Relations Court Act 2011 as amended by Misc amendment Act No 18. Of 2014 reads..

“A person who_

Without reasonable cause fails to comply with an order duly given under subsection (4)commits an offence and shall on conviction be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or both”.

13. The court is satisfied the respondent was properly served with the order of court issued on 4th May 2016 extracted on 10th May 2016 and signed by the Deputy Registrar of the court. The court is also satisfied that the Vice chancellor Prof Peter B. Kibas and the Human Resource Manager M/s Elizabeth Muchoki were properly made aware of the court order but have intentionally and blatantly failed to implement it. The two were given ample time to show reasonable cause why they ought not to be held in contempt of court for failing to implement its order but have failed to do so.

14. Therefore, the court finds as follows;

1. The Vice Chancellor of the respondent Prof. B. Kibas is guilty of the offence of contempt of court by will fully failing to implement the order of the court issued on 4th October 2016. The offender is sentenced to imprisonment for a term of six (6) months.

2. The Human Resource Manager of the respondent M/s Elizabeth Muchoki is guilty of the offence of contempt of court by wilfully failing to implement the order of the court issued on 4th October 2016. The offender is sentenced to imprisonment for a term of three (3) months.

3. The sentence in respect of Peter B. Kibas and Ms Elizabeth Muchoki is suspended for five (5) days from today on condition the two comply with the order of the court issued on 4th May 2016 failing which the suspension is lifted and the sentence to take effect thereof.

4. The respondent to pay the costs of the application.

Dated and delivered at Nairobi this 7th day of October, 2016

MATHEWS N. NDUMA

PRINCIPAL JUDGE