



REPUBLIC OF KENYA

EMPLOYMENT & LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 712 OF 2015

UNION OF KENYA CIVIL  
SERVANTS.....CLAIMANT/APPLICANT

VERSUS

CABINET SECRETARY MINISTRY OF HEALTH.....1<sup>ST</sup>  
RESPONDENT

PRINCIPAL SECRETARY MINISTRY OF HEALTH .....2<sup>ND</sup>  
RESPONDENT

THE REGISTRAR NURSING COUNCIL OF KENYA.....3<sup>RD</sup>  
RESPONDENT

THE HONOURABLE THE ATTORNEY GENERAL.....4<sup>TH</sup>  
RESPONDENT

RULING

1. The Claimant/Applicant's through the Notice of Motion Application dated 16<sup>th</sup> June 2015 seeks that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who had been properly served with the Court order and had intentionally disobeyed the Court orders by refusing to reverse the transfer/posting orders dated 20<sup>th</sup> March 2015 be cited for contempt. The application was supported by the affidavit of Tom Ndege sworn on 16<sup>th</sup> June 2015. The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondent was opposed and filed a Replying Affidavit sworn by James Macharia the Cabinet Secretary Ministry of Health on 31<sup>st</sup> July 2015. He deposed that he was never personally served with the order issued on 27<sup>th</sup> May 2015 and that he personally became aware of the order on 12<sup>th</sup> June 2015 and that the reversal of the posting order was made vide the letters Ref No. MOH/LEG/1/A/VOL.III. He deposed that he had great respect for due process and would never knowingly ignore or disobey Court orders. The 3<sup>rd</sup> Respondent filed Grounds of Opposition on 24<sup>th</sup> July 2015. In the grounds, the 3<sup>rd</sup> Respondent asserted that the application was fatally flawed and incurably defective and that the application was self seeking and the applicant had come to Court with unclean hands.
2. The parties urged the application before the court on 31<sup>st</sup> July 2015. Mr. Jaoko urged the application and submitted that the Respondents were guilty of disobeying Court orders. He submitted that the orders were served on 28<sup>th</sup> May 2015 and there was no obedience of the Court orders despite service. He submitted that flagrant disobedience of Court orders should not be allowed. He relied on the case of **CBA v Ndirangu [1992] KLR 30** and **Director of Pensions v Abdul Majid Cockar [1999] eKLR**. He submitted that he appeared before Wasilwa J. on 18<sup>th</sup> June 2015 and sought leave to commence contempt proceedings and was referred to the case of **Shimmers Plaza v National Bank of Kenya Limited [2015] eKLR** where the Court of Appeal (Karanja, Mwera & Mwilu JJA) held that no leave is required unless one is coming under the Judicature Act. He also relied on the case of **Christine Wangari v Elizabeth Wanjiru Evans & 11 others**. He submitted that the letters attached to the affidavit of the 1<sup>st</sup> Respondent are in

reaction to the contempt application. He submitted that the contempt application was received on 19<sup>th</sup> June and that they backdated the letters to 12<sup>th</sup> June and served the letters on 23<sup>rd</sup> June almost 2 weeks later.

3. Miss Chege for the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondent submitted that the orders were served on Ministry of Health and did not reach the Cabinet Secretary personally. She submitted that the orders upon receipt were channeled to the officers to deal with them and there was annexures to prove the reaction. The bottom line is that there was compliance. She thus urged the prayers should not be granted.
4. Mr. Mutua for the 3<sup>rd</sup> Respondent was also opposed and submitted that the application for contempt was meant to mislead and deceive the honourable Court. He submitted that the order subject of the contempt application was very specific that it was for 14 days and the order was not extracted as granted by the Court as the clause on the 14 days was missing. He submitted that the aggrieved parties had been reinstated as ordered by Court. He submitted that had there been noncompliance the earliest opportunity to raise the issue would have been an application for contempt before the substantive application was due for hearing. He submitted that the deponent of the affidavit was not a party aggrieved by the disobedience of the Court orders.
5. The law on contempt is clear. The fiat issued by Courts is not an entreaty, it is not a plea. It is a command. As was stated by the learned Judges of Appeal (Karanja, Mwera & Mwilu JJA) in **Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR**:

We reiterate here that Court orders must be obeyed. Parties to whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather it is mandatory and a person does not chose whether to obey a court order or not. For as Theodore Roosevelt, the 26<sup>th</sup> President of the United States of America once said “no man is above the law and no man is below it; nor do we seek any man’s permission to obey it. Obedience to the law is demanded as a right; not as a favour”

6. The Claimant/Applicant asserts there is disobedience of a court order. The Respondents assert there has been obedience. It is clear there was reaction to the orders circa the time the application for contempt was made. Is obedience of the Court order, albeit a bit late, grounds for committal? In my view, the obedience of the order was in effect a purging of the contempt. Should the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents be cited for contempt? In the considered view of the Court, the Respondents have by accounts complied though the compliance was delayed. In the circumstances, I will not issue any orders in relation to their alleged contempt and direct instead for parties to fix the substantive motion for hearing before any other Court as I will be unable to hear the application due to official engagements.
7. Parties are reminded of the dicta of the Court of Appeal cited above. No one is above the law and should circumstances of a particular case reveal contempt of Court, the Courts will not hesitate to punish for that contempt. It matters not whether it be the parties in the dispute, a process server or even the lawyer acting in a matter.

Orders accordingly.

Dated and delivered at Nairobi this 3<sup>rd</sup> day of **August** 2015

**Nzioki wa Makau**

**JUDGE**