



REPUBLIC OF KENYA

INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO 199 OF 2011

**UNION OF NATIONAL RESEARCH AND ALLIED INSTITUTES STAFF OF KENYA
(UNRISK).....CLAIMANT**

VERSUS

**KENYA INDUSTRIAL RESEARCH AND DEVELOPMENT INSTITUTE
(KIRDI).....RESPONDENT**

RULING

1. The Claimant/Applicant herein seeks that the Director of the Respondent be cited for contempt for the willful disobedience of a Court Order. This is per the Notice of Motion Application dated 12th March 2013. The Notice of Motion Application is brought under Sections 13 and 20(7) of the Industrial Court Act 2011 and Rules 9(1) and 16(1) & (3) of the Industrial Court (Procedure) 2010 and all enabling provisions of the law. In the main, the Application puts the Respondent on Notice that the Honourable Court will be moved for an Application by Claimant for Orders:-
 1. THAT this Honourable Court be pleased to grant leave to commence contempt of Court proceedings against the Director of Kenya Industrial Research and Development Institute.
2. THAT this Honourable Court be pleased to Summon the Director of Kenya Industrial Research and Development Institute to show cause why he should not be cited for contempt of the Court orders given on 2nd February 2012.
3. THAT this Honourable Court be pleased to cite the Director of Kenya Industrial Research and Development Institute given on 2nd February 2012 for contempt of Court orders dated 2nd February 2012 and pro tem fine or jail him accordingly.
4. THAT this Honourable Court be pleased to deny the Respondent herein audience until and unless the contempt herein is purged.
2. The Claimant also sought the payment of costs. This Application was opposed by the Respondent who filed Grounds of Opposition dated 4th June 2013 and a Replying Affidavit sworn on 10th June 2013. In the Grounds, the Respondent opposed the Application dated 12th March 2013 on the following grounds.
 1. The Application is misconceived and frivolous.
 2. The Application is bad in law and incapable of being allowed given the mix up of orders

that are being sought.

3. The Application is made in bad faith and is an abuse of the Court process.
3. The Replying Affidavit denied the factual position taken by Mr. Zachariah Olum Achacha in his supporting Affidavit filed contemporaneously with the Application for leave to commence contempt of court proceedings. Mr. Jairus Ombui deposes that there is no Court order issued by Hon. Justice Maureen Onyango.
4. In essence, what the Court has to determine as at this stage is whether convincing grounds exist to permit the initiation of contempt of Court proceedings against the Respondent's Director.
5. What is the law of contempt in Kenya? In Kenya we have to have recourse to the Judicature Act as a starting point. True, the provisions of Section 20(7) of the Industrial Court Act provides that anyone who without reasonable cause fails to comply with a Court order under 20(4) commits an offence and is liable upon conviction to a fine not exceeding 200,000/- or to a term not exceeding 6 months or to both. That said, the true basis of the law of contempt is Section 5(1) of the Judicature Act Cap. 8 Section 5(1) of the Judicature Act 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. (underline mine.)
6. The Section however, does not prescribe the procedure for the manner in which applications for contempt of court are to be made. For procedure we revert to the powers and the procedure of the High Court of Justice in England. The United Kingdom's Contempt of Court Act, 1981, as amended, remains the substantive law of contempt of Court in England. This is in spite of the developments under the reforms undertaken in the United Kingdom towards greater application of the Civil Procedure Rules in England as opposed to the Rules of the Supreme Court. The procedure we adopt is that provided for under Order 52 of the Rules of the Supreme Court of the United Kingdom. The rules require that leave shall be obtained prior to the contempt application being made and the application MUST be accompanied by a Statement setting out
 - a. The name and description of the applicant
 - b. The name, description and address of the contemnor, and?
 - c. The grounds upon which the contemnor's committal is sought?
7. In addition, the Application for committal must also be accompanied by an affidavit verifying the facts relied upon. The Applicant must give notice of the Application for leave not later than the preceding day, in other words, at least one day prior to the making of the Application to the Attorney General's Chambers or State Law Office in Kenya. After grant of leave sought, if the Application for committal is not made within 14 days after grant of leave, the leave so granted shall lapse automatically.
8. The substantive application, accompanied by a copy of the statement and affidavit in support of the application for permission must be served personally on the contemnor unless the court has dispensed with service to him or if it or of the Court thinks it just to so do.?For contempt committed *ex facie* – in the face of the Court, the superior Courts may of their own motion make an order of committal in relation to a person guilty of contempt of court. No grounds shall be relied on at the hearing of an application for contempt, save for those set out in the statement, or in the Application. If the alleged contemnor wishes to give oral evidence on his own behalf, he shall be entitled to do so.
9. In the case before me, there is no notice of the intention to institute contempt of Court proceedings, there is no statement, there is no verifying affidavit. Indeed there is no attempt to make a proper Application for leave. In the Application, an order made on 2nd February 2012 is stated to be the Order the alleged contemnor failed to obey. The order is headed as follows:-

Before Hon. Lady Justice Maureen Onyango on 2nd February 2012. The judge, was not sitting in February 2012. We had not been appointed as judges as the JSC only recommended our appointment in July 2012 and we were so appointed on 12th July 2012. I recall being present when Lady Justice Maureen Onyango took her oath of office on Friday 13th July 2012 at State House Nairobi.

10. It is amply clear the Order alleged to have been breached was not capable of being breached as the person alleged to have given it did not give the order as she was not a judge at the material time. In the premises, no proper Application for contempt can be laid on the Order issued at Nairobi on 22nd November 2012 and the basis of the present contempt of Court proceedings. I therefore dismiss the Application dated 12th March 2013 with costs to the Respondent.

Orders accordingly.

Dated and delivered at Nairobi this 31st day of January 2014

Nzioki wa Makau

JUDGE