



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 1029 OF 2011

BETWEEN

MUSAWA ZACCHAEUS MUMALI.....
CLAIMANT

VERSUS

NZOIA SUGAR COMPANY LIMITED.....
RESPONDENT

RULING

The Court delivered an Award on 24th August 2012, ordering the Respondent *inter-alia* to place the Claimant in job grade MG.5, and pay the Claimant the monthly remuneration applicable to that grade.

The Respondent complied with the Award, but the Claimant feels there was no full compliance on the order for job up-grade.

He consequently filed an application dated 28th January 2013 seeking to have Mr. Saul Wasilwa, Managing Director of the Respondent Company, committed to prison for such period of time as the Court may deem fit.

The application is based on the affidavit of the Claimant, sworn on 28th January 2013.

The Respondent relied on the two affidavits sworn by its Legal Officer Rita Makhongo.

Parties agreed to have the application determined by way of written submissions, which have been placed on the record.

The Court Finds and Orders:-

1. The Respondent has complied substantially, with the Award of 24th August 2012. The Claimant has received damages awarded at Kshs.1,500,000, and arrears of Kshs.1,339 per month dating back from 1st July 2004 have been paid. The Claimant received a letter dated 14th February 2013, up-grading him to job grade MG.5. It is not therefore correct for the Claimant to state under paragraph 8 of his Statement of Claim dated 28th January 2013, that the Respondent has flagrantly disobeyed the entire Award.
2. There is nothing in the Claimant's Statement of Claim or affidavit in support of the application, to show that Employees currently in MG.5 are earning more than Kshs.100,806. This is an assertion

contained in the Claimant's submissions, but which is not borne out in evidence.

3. Consequently, the Claimant has not shown sufficient reason to merit the imprisonment of Mr. Saul Wasilwa for contempt of Court.
4. The Claimant should instead bring cogent evidence to show that although he has been up-graded, he continues to earn less than his colleagues in the grade MG.5. Such an imbalance can be rectified by an order for payment of verifiable arrears, without imprisonment of the Managing Director. *IT IS ORDERED:-*
 - a. *The Application seeking to commit the Managing Director Mr. Saul Wasilwa to prison for contempt of Court is disallowed.*
 - b. *No order on the costs.*

Dated and delivered at Nairobi this 22nd day of January 2014

James Rika

Judge