



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 79/2014

(formerly NAI 17/2014)

(Before Hon. Justice Hellen Wasilwa on 30th April, 2014)

HON. JOHNSTONE KHEJELI CLAIMANT

-VERSUS-

THE SPEAKER COUNTY ASSEMBLY OF VIHIGA & ANOTHERRESPONDENTS

RULING

The application before court is the one dated 22.4.2014 brought by the applicants seeking to cite the respondents herein for contempt of court. It is the applicant's contention that the order granted by this court on 9.4.2014 were served on the respondents. The respondents however went ahead and served the claimant applicant with a dismissal letter dated 11.4.2014 on the 11.4.2014 which dismissal was in violation of the court orders.

They cited ***Christine Wangari Gachege VS Elizabeth Wanjiru Evans & Others – Court of Appeal C. A No. 233/2007 (UR, 144/2007)*** as proof that leave of court need not be granted before such an application is instituted.

The respondents didn't file replies to this application but responded orally in court. The respondent cited Section 40 of the County Government Act which provides for the procedures of removal of a County Executive from office. It is their position that they executed the removal motion and completed it on 2.4.2014, and therefore could not reverse the submission of the County Assembly.

The 2nd respondent on the other hand submitted that the County Governor could not be cited for contempt as he is not party to these proceedings. It is also their submission that the governor was never served as CEO of the County Government before he made the decision to dismiss the applicant on 9.4.2014.

The applicants insisted that the order for contempt be granted and that it is their position that the respondents were served.

The issues for determination are:-

1. **Whether the respondents were served with the order of the court dated 9.4.2014.**
2. **When the service was effected.**
3. **Whether respondents are in breach of the court's order.**

On 1st issue, the affidavit of service of Robert Mbeja the process server deponed on 10.4.2014, he stated that he served one Mukabi James and Aggrey Musiega respectively with the order of the court. This was effected on 10.4.2014.

This answers my 1st and 2nd issue. On 11.4.2014 however the claimant applicant was served with a dismissal letter – coming after the order of court barring such dismissal on 9.4.2014. In effect the action of the respondent was irresponsible given that the respondent's legal advisors should have advised their clients properly.

The law on contempt emanates from Section 5 of the Judicature Act and Part 81 of Civil Procedure Amendment Rules of England of 2012 and particularly under rule 81.4. Under the procedure it must be demonstrated by the applicant that personal service on the respondent (contemnor) was effected and in breach therefore the contemnor ignored or flouted the order.

This position has been demonstrated in the case of *Victoria Pumps Ltd & Another VS KPA & 4 Others 1 KLR [2002]* at pg 709 where *J. Otieno* (as he then was) stated that:-

“Where a party is seeking committal to civil jail against the other party on grounds that the order delivered by court has been disobeyed, the party sought to be committed or cited for contempt must be personally served with a properly extracted order which must also have a penal notice appended to it.”

The process server has indicated that he served the Legal Officer of the respondents and not the CEO and Speaker as envisaged. This mode of service is not the one intended on application of this nature. Given that the Speaker and Governor respectively were not served personally, this application must fail and I decline to cite the respondents for contempt.

HELLEN WASILWA

JUDGE

30/4/2014

Appearances:-

Shitsama for claimant present

Opanga for 1st respondent present

Musiega for 2nd respondent present

CC. Wamache