

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 66/2013

(formerly Nai 1155/2011)

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

KUDHEIHA CLAIMANTS

-VERSUS-

B.O.G CHAVAKALI HIGH SCHOOL RESPONDENT

RULING

The application before court is the one dated 6.11.2013. It was filed by the applicant claimants herein seeking orders that leave be granted to them to commence contempt proceedings seeking committal to civil jail of the contemnor for disobeying court order issued in this court through an award dated 10.6.2013. The applicants further seek orders to have the court impose a fine on the contemnor for disobeying the court orders. The applicants contends that the order of court was properly served on the contemnor, the principal of the respondent school and he had admitted being served with the judgment on 13.2.2014. The applicants further aver that the contemnor was served with the order and refused to obey it alleging that he had resolved the matter which is not true.

The respondent contemnor opposed this application. They relied on an affidavit sworn by the principle of the respondent one Indimuli. It is their position that no order was ever extracted nor personally served on him to be obeyed. That what was served was a judgment without a penal notice. They stated that this application cannot stand in view of the fact that there was no order to be obeyed extracted. They cited **Victoria Pumps Ltd & Another VS Kenya Ports Authority & 4 Others [1 KLR] 2002** at pg 709 which dealt with issue of contempt of court. It is the contemnor's position that he was never uncooperative as alleged by the applicants but he thought that the matter had been resolved due to information given to him by the school bursar that the matter had been dealt with in 2008. They urged court to dismiss the application.

Having heard both parties, I do find that indeed the application cannot stand because no order was ever extracted nor served on the contemnor. This is in line with the holding in the cited case where **J. Otieno** as he then was held 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 situation in the current case prevails as in the case of **Victoria Pumps** and so I find the application lacks merit and I dismiss it accordingly with no order as to costs.

HELLEN WASILWA

JUDGE

30/4/2014

Appearances:-

Mware for claimant present

Osango for respondent present

CC. Wamache