



IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 1539 OF 2013

PROFESSOR FRANCIS M. NJERU CLAIMANT

VERSUS

PROFESSOR MABEL IMBUGARESPONDENT

RULING

Kamau Kuria Advocate,

Gathaara Advocate, and

Gacheru Advocate - appearing for the Claimant

And

Lutta Advocate – appearing for the Respondent

1. There are two applications herein for ruling, one dated 19th February 2014 and 16th April 2014. The two applications were on 16th April 2014 certified urgent by the court and directions made that they be heard together on 28th April 2014.

2. The claimant Prof. Francis Njeru has made his application for committal to civil jail of the respondent, Professor Mabel Imbuga through his application dated 19th February 2014, and made under the provisions of Under Section 5 of the Judicature Act and Order 52 Rule 3 of the Supreme Court Practice of England on the grounds that the Respondent has greatly undermined and continues to undermine the authority of this court and the rule of law. There are two orders made by this Honourable Court on 6th December, 2013 and 21st January, 2014 respectively. The former required the respondent's university to pay the Claimant his salary and benefits for the period between August and December, 2013. The university paid only half salaries not paid during that period leaving unpaid Kshs. 1,468,680.50/= - by way of benefits. The other order dated 21st January 2014, this Honourable Court ordered the Respondent not to recruit a person to fill his post. The order reads as follows;

That the Respondent be and is hereby restrained by itself, its servants and agents from recruiting a person to fill the Claimant/ Applicant's, planning and Development) until the hearing and determination of this application or further orders of this Honourable Court.

3. The claimant is thus seeking that;

1. *The application is certified urgent.*

2. *That the service for this application be dispensed with the first instance owing to the urgency of this matter.*
3. *That this Honourable Court be pleased to grant to the applicant leave to apply for an order that Prof. Mabel Imbuga, the Respondent herein, to be committed to jail for six (6) months for contempt of court.*
4. *That if prayer 1 is granted, this Honourable Court be pleased to order under Order 52 Rule 3 that there be not at least 8 clear days between the service of the Notice of Motion and the day named therein for the hearing.*

4. This application is based on the grounds that;

- a. *on 21st January, 2014 this Honourable Court restrained the University from advertising the Claimant's job of Deputy Vice Chancellor (Administration, Planning and Development) whose portfolio includes financial administration and set down the Claimant / Applicant's Notice of Motion herein dated 14th January, 2014 for hearing inter parties by way of highlighting submissions on 26th February, 2014; that order read as follows,*
- b. *That the Respondent be and is hereby restrained by itself, its servants and or agents from recruiting a person fill the Claimant / Applicant's post of Deputy Vice Chancellor (Administration , Planning and Development) until the hearing and determination of this application or further orders of this Honourable Court.*
- c. *To defeat the object of the Claimant/applicant's application dated 14th January, 2014 for quashing his purported summary dismissal of 9th January, 2014, the University has purported to create a post of Deputy Vice Chancellor to deal with finance and advertised it in the media on 7th February, 2014; as explained in the verifying affidavit of the Claimant/Applicant herein sworn on 18th February, 2014;*
- d. *the Respondent has also disobeyed an earlier order of this Honourable Court issued against the University on 6th December, 2013 requiring it to pay the Claimant his salaries and benefits; that order reads as follows,*

That the suspension of the Claimant shall be with fully pay and benefits until the disciplinary process is finalized or this case is heard and determined whichever comes first.

That the arrear salary and remuneration be paid accordingly.

- e. *instead of paying both the salary arrears of the period between 1st August and 31st December, 2013, the Respondent paid Kshs 971,381.70 as the salaries on 22nd December, 2013 but declined to pay the Claimant's benefits which now add up to Kshs. 1,468,680.50/=;*
- f. *the respondent has undermined and continues to undermine the authority of this court;*
- g. *The Claimant/Applicant fears that the University could fill his job before 26th February, 2014 when his application comes up for inter parties hearing.*
- h. *The Respondent continues to occasion financial hardship to the Claimant / Applicant in a matter where it is ordered on 6th December, 2013 to make payments to him.*

5. Subsequent to this application, the claimant filed his application dated 16th April 2014; seeking for orders that;

1. *That this Honourable court be pleased to certify the claimant/applicants' application urgent.*

2. *That service of this application is dispensed with owing to the urgency of the matter.*
3. *That this Honourable Court be pleased to hear the Claimant's Application dated 19th February, 2014 for committal to jail of Prof Mabel Imbuga during this Honourable's Court vacation.*

6. The application is based on grounds that;

- a. *The respondent, who is the Vice Chancellor of Jomo Kenyatta University of Agriculture and Technology, in disobedience of an order made herein on 21st January, 2014, advertised the claimant's job in the issue of the Daily Nation of 4th April, 2014.*
- b. *According to the advertisement, applicants must hand in their applications before 25th April, 2014.*
- c. *Any time after 25th April 2014, the respondent to the statement of claim herein, Jomo Kenyatta University of Agriculture and Technology, could fill the claimant's post and render this suit nugatory;*
- d. *in addition to disobeying the order made on 21st January, 2014, the respondent has disobeyed an order made herein on 6th December, 2013 requiring that the university pays the claimant's salaries and allowances due to him then;*
- e. *through the disobedience of the said two orders issued herein on 6th December, 2013 and 21st January, 2014 the respondent has undermined and continues to undermine the authority of this Honourable Court and the rule of law in general.*

7. These applications are further supported by the affidavit of the claimant as the applicant on 16th April 2014 the claimant came to court under Certificate of Urgency whereby the court made the following orders;

1. *That this application be and is hereby certified as urgent and service thereof be dispensed with in the first instance.*
2. *That the claimant's application dated 19.2.2014 for committal to jail of Prof. Mabel Imbuga be heard during the court vacation.*
3. *That this application and orders of court be served upon the respondent forthwith but not before the close of the day on 23rd April 2014'*
4. *That this application and application dated 19.2.2014 be heard inter parties on 28.4.2014.*

8. On 28th April 2014 both parties were in court represented by their advocates for the hearing of the two applications as directed by the court on 16th April 2014. The respondent, through a Replying Affidavit sworn by Vivian Nyamura being the Chief Legal Officer of Jomo Kenyatta University of Agriculture and Technology and dated 25th February 2014 state that the orders subject of these contempt of court proceedings were never served upon the respondent and that to the best of their knowledge have complied with orders made on 6th December 2013 through payments of salary arrears as outlined in the claimant's pay slip. However the claimant is not entitled to millage claims as outlined in the application before court. Also that they have not disobeyed orders of 21st January 2014 as the university Council have the mandate to make decision to create new positions of deputy vice chancellor finance and deputy vice chancellor administration, which are different from the position held by the claimant of deputy vice chancellor finance, planning and administration. That to be in contempt would require proof of personal service upon Professor Mabel Imbuga and evidence that the court orders have been disobeyed which is not the case for the respondent.

9. The claimant's case is on the one part that the respondent is seeking to defeat the object of the suit herein by hiving off some of the responsibilities of the claimant and giving them to purported deputy vice chancellors Finance and vice chancellor Administration created during the pendency of this suit. That with a view to protect the suit and the claimant's position as the Vice Chancellor Administration, Planning and Development, this court on 21st January 2014 made orders;

That the respondent be and is hereby restrained by itself, its servants and or agents from recruiting a person to fill the claimant/applicant's post of Deputy Vice Chancellor (Administration, Planning and Development) until the hearing and determination of this application or further orders of this court.

10. While the above orders were still in force, on 7th February 2014 and on 4th April 2014, the respondent's university has purported to create/establish and advertise the claimant's post in two parts being Deputy vice Chancellor (Finance) and Deputy Vice Chancellor (Administration). That from the respondent's university statute, the responsibilities of the claimant's office include financial administration and human resource management outlined as;

The Deputy Vice Chancellor (Administration, Planning and Development) shall be the head of administration, planning and development division of the University which has the following responsibilities: staff recruitment, promotions and discipline, personnel administration, financial administration, healthcare services, registry administration, legal matters, transport and central services.

11. Based on the above outline, the claimant has a contract of employment with the respondent's university and his responsibilities include human resource management; outlined as;

As Deputy Vice chancellor (APD) you will have the following key responsibilities:

- i. *Act as the principal assistant advisor to the Vice Chancellor in the day to day running of the university in matter pertaining to Human Resources, staff recruitment, training, promotions and discipline, personnel administration, financial administration and management ... development and maintaining best practice systems, structures and procedures.*

12. Looking at the description of the tasks in the advertisement placed by the respondent in the newspapers on 7th February 2014 and 4th April 2014, the respondent has split the office of the claimant and created new offices in Finance and Administration. The tasks for the two new offices as advertised are the same as assigned to the office of the claimant and if filled, the same will make the office of the claimant only that of planning only and this would effectively amount to unilateral variation of his contract and this would defeat the court orders of 21st January 2014. If this process is not stopped, the respondent is actively undermining the authority of the court.

13. The second part of the claimant's application is that from the orders of court made on 21st January 2014, the respondent has disobeyed an order made on 6th December 2013 requiring the University to pay the claimant salaries during the period he was under suspension. The orders of 6th December 2013 were;

1. *That the suspension of the claimant shall be with full pay and benefits until the disciplinary process is finalized or this case heard and determined whichever comes first.*
2. *That the arrears salary and remuneration be paid accordingly.*
3. *The costs of the application shall be in the cause.*

14. That from these orders, the respondent's university paid the claimant the salaries but failed to pay his allowances which all add up to Kshs.1, 468,680.50 and thus inflicting financial hardship upon him and coupled with this the advertisement now placed by the University on 4th April 2014, the claimant's position may be filled any day after 25th April 2014 in contempt of this Court's Orders.

15. The claimant therefore submitted that the failure to pay his allowance has significance in that the orders of the court in this regard have been ignored and Prof. Mabel Imbuga has not sworn any affidavit showing the Respondent University has paid the same. Vivian Nyambura swore her affidavit in reply and has relied upon on information received from the finance officer but does not annex to the affidavit or any document from the finance officer showing when these payments

were made. That an institution like the respondent university cannot make any payments without means of verification. Also that Prof. Mabel Imbuga as the chief executive officer and the accountable officer as well as the Finance Officer have failed to make their affidavits and make attachments therein confirming any payment and by having Vivian Nyambura make her affidavit is shifting responsibility from themselves will not purge the contempt. Effectively the respondent has failed to pay the claimant as directed by the court on 6th December 2013.

16. The claimant also submitted that the law on contempt is governed by principles that court orders must be obeyed in their own terms and any action taken to the contrary thereon is a nullify as this is in disobedience of court orders. Where one has a problem with any court orders, an appeal must be preferred or move the court for further action. There is no option to obeying court orders. In this case there are hearing dates scheduled for the 27th and 28th July 2014 and the question the claimant has to ask is why waiting for the hearing date? If the respondent is not punished by commission to jail and compelled to obey the orders of 21st January 2014 and those of 6th December 2013, it will be treating as a farce the court orders as at the time of hearing there will be two deputy vice chancellors for finance and administration who will be performing the same duties as the claimant is supposed to discharge.

18. The claimant has served the respondent Prof. Mabel Imbuga personally with the applications and the orders of 6th December 2013 and 21st January 2014. The respondent has avoided direct receipt of service of the court orders by directing all service to be effected through the secretary and legal officer, Vivian Nyambura. That the principles outlined in the case of Mohamed versus bakari & 2 Others, 2005 2KLR that where a person deliberately evades service by going underground or other subterfuge, she is deemed to be personally served if the process left is at the place where that person works or resides. In this case prof. Mabel Imbuga is to be taken as having been personally served with the orders subject of the contempt of court proceedings. In the case of Refrigerator and Kitchen Utensils Ltd versus G. P. Shah and others, Court of Appeal at Nairobi, Civil Appeal No. 39 of 1990, the court held that advocates who aid and abet disobedience of court orders can be committed to civil jail and that knowledge of existence of court order suffices as service of the order on that persons, knowledge supersedes personal service for good reason as held in the case of Kenya Tea Growers Association versus Francis Atwoli & 5 Others, petition No.64 of 2010.

19. The claimant is therefore seeking the committal to jail of Prof. Mabel Imbuga for a term of six (6) months for contempt of court. Further that the contempt be purged.

20. In response Advocate for the respondent opposed the claimant's application on the grounds that the order for the payment of allowances to the claimant was complied with where it is admitted on the receipt of Kshs.971, 381.70 posted to the claimant's account on 19th December 2013. The Replying Affidavit of the respondent has annexures confirming transfer of funds. The pay roll for December outline what was due to the claimant and was paid less the statutory deductions and other dues owing and the balance was remitted to the claimant. This is also reiterated in the claimant's Verifying Affidavit. The claimant was suspended on half (1/2) pay, the withheld half was paid less deductions as of December 2013 and January 2014. That where there are any outstanding dues owed to the claimant and not tabulated and approved the same can be addressed at the full hearing. From the claimant's pay slip, the gross pay amounted to Kshs.832, 635.00 less deductions amounting to kshs.655, 199.40 with a net of kshs.177, 435.00 all having been outlined for the claimant. This was paid to the claimant.

21. The respondent also submitted that the mileage claim by the claimant relate to his private motor vehicle and amounting to kshs.1, 197,833.90 is not payable as the same is not based on any documents that the claimant has put any documents to the notice of the respondent indicating that he was engaged in any of their business so as to claim mileage that can be paid to him. That the respondent university is a public entity and can only make payments to staff that are on official duty upon presentation of documents confirming any expense. The claimant has since October 2013 been on suspension and could not have incurred costs over 1.4 million on behalf of the respondent.

22. The respondent is aware that the claimant contract allow for reimbursements of agreed expenses where he becomes entitled but the same is payable through reimbursement upon submission of receipts for water bills, electricity bills and water bill. The documents relating to these expenses once submitted to the respondent, these could be reimbursed. However, prior to filing the application before court, the claimant has failed to show that he tried to seek for a reimbursement of his claim and the respondent refused. There are systems and officers of the respondent who are authorized to process such reimbursements but they must be presented to the respondent by the claimant through completion of the appropriate forms.

23. That the respondent cannot be in contempt of the order of the court dated 6th December 2013 of 21st January 2014 until there is evidence that receipts were presented in the appropriate forms and with the necessary attachments seeking reimbursement and were refused. In this regard there is no contempt. Further, the court orders as above did not outline any specific amounts as payable and only directed that salary arrears and allowances be paid. There was no specific amount as the order is not outlined in a monetary sum and therefore cannot be a basis for contempt. If there was a specific amount, the action for the claimant was execution and not contempt proceedings.

24. The respondent also submitted that the orders of 6th December 2013 have not been served. The amounts claimed are contested. This cannot be a ground for contempt.

25. The orders of 21st January 2014 have also not been disobeyed. The respondent did an advertisement which followed a previous advertisement before the application in court was filed. The previous advertisement related to the claimants position but this was withdrawn and the new officers have now been advertised. These two positions relate to a decision made by the respondent university Council to create these positions as part of their statutory mandate. The court order related to the non-recruitment of the claimant's post.

26. That the claimant has not presented any evidence to show the respondent has recruited and filled his position and there is no court order stopping the respondent from advertising for the positions. The decision to advertise was made by the University Council and not Prof. Mabel Imbuga thus no contempt of any court orders. The respondent also submitted that contempt of court is a very serious matter and the standard of proof must be very high. There must be evidence of service of the orders subject of contempt proceedings and the affidavit of service by the claimant process server does not state they went to serve the chief executive officer personally. The contemnor was not served personally so as to be cited for contempt. Therefore there cannot be a blanket breach of court orders unless this evidence exists and is not demonstrated in this case. This duty was on the claimant which they have failed.

27. The facts to the application are contested, there is no recruitment with the purpose of filling of the claimant position and there are no orders stopping the respondent from advertising for new positions of deputy vice chancellor finance and vice chancellor administration which are different from the position held by the claimant. That On 28th March 2014 the court ruled on this matter paving way for the respondent to fill in the position held by the claimant as he was dismissed on 8th January 2014. There is nothing to stop the respondent from replacing the claimant and this has been done through creation of two new positions of deputy vice chancellor finance and administration. This is open to the respondent to do. If the court in the final order directs the respondent to reinstate the claimant, his position is still there and the respondent will comply.

28. That the claimant has stated there is bad blood between him and Prof. Mabel Imbuga which show there is bad faith between them but in this case, it is the Council of the university that terminated the claimant and the Chairperson of the university has signed the summary dismissal letter and not the chief executive officer. To grant an order of contempt against Prof. Mabel Imbuga would not be appropriate in the circumstances of the case.

29. In the event the court finds there was contempt, which has been denied, the same cannot be

directed against the chief executive officer as vice chancellor of the respondent without reference to the Council who are not made respondents herein and the order for civil jail is not an appropriate sanction and a fine can suffice. That the court has previously held this matter has too many interlocutory applications and should proceed to full hearing to resolve the pending claims.

30. To these replies the claimant in his Further Affidavit states;

That there is much bad blood between me and the respondent who has, since August 14th, 2013 done everything in her power to destroy my academic career.

That the Respondent is determined to usurp the function of this Honourable Court to determine my suit and instead terminate it according to her wishes before the trial takes place o 17th June, 2014 and 28th July, 2014.

That the Respondent has taken three measures to remove me from my employment namely m suspension, my purported dismissal and purported creation of offices of Deputy Vice Chancellor (Finance) and Deputy Vice Chancellor (Administration) to be filled by person who would take over my job as Deputy Vice Chancellor (Administration, Planning and Development).

That the bad blood referred to above is revealed by the following actions which have been done since 1st August, 2013:

My purported suspension on 14th August, 2013 as the Deputy Vice Chancellor (Administration Planning and Development);

My purported summary dismissal on 8th January, 2014;

Purporting, despite an injunction restraining the university from filling my post, to hive off my job, the responsibilities touching finance and administration and advertising, on 7th February, 2014 and 4th April, 2014 purported offices of Deputy Vice Chancellor (Finance) and Deputy vice Chancellor (Administration).

31. It is important to note that all the parties herein are intricately involved and aware of the proceedings herein, particularly with regard to the orders subject of the two applications before court and dated 19th February 2014 and 16th April 2014. These are the orders made by the court and dated 6th December 2013 and 21st January 2014. This is so as outlined in the affidavits of the claimant in support of the two applications above and the Replying Affidavit of Vivian Nyambura dated 25th February 2014 which outlines measures taken by the respondent seeking to comply with both orders of the court.

32. The claimant now asserts the respondent is properly served with the orders herein, notice to comply but has failed to obey and thus in contempt of court. On their part, the respondent states that the orders made on 6th December 2013 were not for a specific amount and what was due to the claimant has been paid and that with regard to orders made on 21st January 2014 they are still complying by not filling his post and what they have done by creating two new posts that have been advertised is a decision of the university Council under their mandate and this has nothing to do with the claimants position. The question is, what are these orders the respondent has fully complied with? When at the same time there are arguments that there was no service with the orders?

The questions before court for determination are;

Whether the respondent/contemnor is guilty of contempt of court;

Whether the application is competent; and

Whether personal service on the respondent/contemnor is mandatory.

33. The crux of the matters here is that on 6th December 2013 this court ordered that;

- a. *That the suspension of the claimant shall be with fully pay and benefits until the disciplinary process is finalized or this case is heard and determined, whichever comes first.*
- b. *That the arrear salary and remuneration be paid accordingly.*
- c. *The costs of the application shall be in the cause.*

34. Further on 21st January 2014, the court ordered that;

That the Respondent be and is hereby restrained by itself, its servants and or agents from recruiting a person to fill the Claimant/Applicant's post of Deputy Vice Chancellor (Administration, Planning and Development) until the hearing and determination of this application or further orders for his Honourable Court.

35. The respondent has either complied with these orders or they have not. When the application for contempt dated 19th February 2014 was presented in court, and before it could be heard, the respondents filed their Replying Affidavit sworn by Vivian Nyambura and dated 25th February 2014. This Reply outline how the salaries and other emoluments due to the claimant have been paid and go on to challenge the claimant on other claims said not to have been incurred while undertaking the business of the respondents. If indeed the respondent were acting in good faith and in compliance with the orders to pay the claimant his outstanding salaries and benefits, I take it then, the respondent was and the aware by conduct and actions of the orders made on 6th December 2014. Equally on the same breath, the respondent's state that they have now through the university Council created two new posts that of deputy vice chancellor finance and that of deputy vice chancellor administration as this is their mandate. One would ask why this was found necessary had the respondents not been aware that there is a court order barring them from replacing the claimant. Equally this is condition and action indicative that indeed the respondent was aware of the orders dated 21st January 2014. Hence the reason why the respondent saw it necessary to create two new post, put them for advertisement to camouflage and circumvent the orders of the court. However the affidavit in reply has been sworn by Vivian Nyambura the legal officer while the claimant effected service upon the secretary to the respondent prof. Mabel Imbuga. Was this service enough in a case like this one where contempt proceeding are against the respondent prof. Mabel Imbuga?

36. in *Re Bramblevale Ltd* [1969] 3 All ER 1062, also cited in *Witham v Holloway* (1995) 183 CLR 525, the standards applicable where contempt proceedings are undertaken by a party in civil proceedings were outlined noting;

A contempt of court is an offence of a criminal character. One may be sent to prison for it. It must be satisfactorily proved...beyond reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence.

37. In this regard, personal service is prerequisite in contempt proceedings. A copy of the order must be shown to have been received and or served upon the person of the respondent in default with the requisite penal notice indorsed thereon. In this regard, the case of *Ochino & Another versus Okombo & 4 Others* [1989] KLR, 165, is important to quote;

A copy of the order has been served personally on the person required to do or abstain from doing the act in question. The copy of the order served must be indorsed with a notice informing the person on whom the copy is served that if he disobeys the order, he is liable to the process of execution to compel him to obey it.

This requirement is important because the court will only punish as contempt a breach of injunction if satisfied that the terms of the injunction are clear and unambiguous, that the defendant has proper notice of terms and that breach of the injunction has been proved beyond reasonable doubt.

38. Therefore, contempt proceedings must be taken with the seriousness they deserve. This must be satisfactorily and certainly proved on a degree higher than on a balance of probabilities but again lesser than that of beyond measurable doubt as held in *Mitika versus Baharini Farm Ltd* [1985] KLR 227. This must be the balance between civil and criminal process that must be observed. This I find in the case of the respondent where there was service upon the secretary as deponed by Nixon Muhatia in his Affidavit of Service;

That at the reception I met two secretaries, Angela Njuguna and Elizabeth Rex whom I introduced myself and the purpose of my visit.

That the secretaries upon looking at my documents, they referred me to a lady who is her personal assistant, Lily Mukamba for directions.

That the personal assistant, Vivian Nyambura Waithaka accepted service of all the documents and acknowledged on all of them on behalf of Prof. Mabel Imbuga.

39. The emphasis on personal service in reply by the respondent is noted. However, it is notable that the issue of service and even personal service is satisfactorily handled by the claimant.

40. Committal to civil jail as sought by the claimant should be a last resort. If any other alternatives are available, these should be applied on priority. This cannot be overemphasized for purposes of meeting the ends of justice. Even courts will endeavor to apply alternatives than a committal to jail in civil proceedings.

41. I have carefully looked and analyzed the orders sought by the claimant in both applications dated 19th February 2014 and 16th April 2014 together with both orders subject in these applications made on 6th December 2013 and 21st January 2014. The orders made on 6th December 2013 directed the respondent to pay the claimant salary arrears and benefits. The amounts were not stated. Both parties agree that the salary arrears have been paid but the claimant insists that there are allowances, benefits and expenses that he has incurred that have not been settled and or paid by the respondent. On their part, the respondents insist that since the benefits due were not quantified by the court in the order these can only be paid according to the terms of the contract for the claimant after his presentation of the same in the requisite forms as they are a public body and need to account for payments.

42. I have looked at the annexures to the claimant's Further Affidavit; they are varied and form various expenses over a period of time. These are expenses incurred by the claimant for water, electricity, phone and motor vehicle use and not reasonably expected that the respondent would be immediately aware of the same unless they are brought to their notice. Such notice is the core of good labour relations where each employer is expected to ensure fair and practical policies and procedures are in place to enable employee access services and enjoy their work environment. It is therefore not an unreasonable expectation that I find legitimate in this case in view of the orders of 6th December 2013 that the benefits due to the claimant were not quantified and where such expenses accrued, he was to make submissions as per the respondent policy for reimbursement. Where such benefits are due and not paid, this is a claim that require proof and can only be confirmed by the court as and when parties make their presentations at a full hearing. To assess these as due and owing at this stage in contempt proceeding where the same are contested would be the injustice.

43. To cite the respondent for contempt in such a case as with regard to orders of 6th December 2013, based on the submissions made by both parties in court and in view of the contempt orders

now being sought would be to defeat the essence of the same.

I therefore find there is no contempt of the orders of this court dated 6th December 2013.

44. With regard to the orders of 21st January 2014, the respondent was restrained;

... Restrained by itself, its servants and or agents from recruiting a person to fill the Claimant/Applicant's post of Deputy Vice Chancellor (Administration, Planning and Development) until the hearing and determination of this application or further orders for his Honorable Court.

45. At paragraph 12 and 13, of Vivian Nyambura Affidavit dated 25th February 2014, she avers that the respondent Council had resolved to create two new positions [deputy vice chancellor finance and deputy vice chancellor administration] but the same are not meant to replace the claimant's position as deputy vice chancellor (Administration, Planning and Development). However a keen look and assessment of the advisement made by the respondent on 7th February and 4th April 2014 against the claimants contract attached to his claim, the functions of the new offices as advertised for vice chancellor Finance and Administration and similar to the duties and responsibilities of the office of the claimant as Deputy Vice Chancellor (Administration, Planning and Development). To justify that the advertised positions are different and based on a decision of the board in view of the court order of 21st January 2014 where the respondent is restrained by itself, its servants and or agents from recruiting a person to fill the Claimant/Applicant's post, would be to ridicule the same. This I find the respondent to have done with wanton abandon. While in possession of a court order, being aware of the section of disobeying the same, by self or through servants and or agents the Council of the respondent's university inclusive, advertised for recruitment, position similar to that of the claimant in contravention of the orders herein.

46. This Court in Dr. Ibrahim Haji Isaak versus Kenya Meat Commission and Another, Industrial Cause No. 1052 of 2013 held that the essence of dealing with contempt is to safeguard of the fundamental supremacy of the law and custody of the rule of law. Otherwise the entire system of administration of justice would be rendered ineffective, clamped and of no consequence. That view is not to be encouraged even on the face of disobedience of simple direction geared towards the administration of justice as these incrementally total to access to justice.

47. In the case cited Above, Kenya Tea Growers Association versus Francis Atwoli and 5 Others, the court went to states with authority;

I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, wilful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal ... even if the defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it.

48. Equally in this case, before the respondent and the University Council went round the orders made on 21st January 2014 to breaking down the post held by the claimant and to create two new offices that have now been advertised, they had the legal option of seeking for the varying, review or discharge of these orders. Where the orders were found too wide in its terms as to affect compliance, the respondent still had the option of seeking clarification, vary or review. The orders were not left open to unilateral interpretation. To circumvent the same and state that the claimant's post is still available is to ridicule the authority in the orders as issued.

I therefore find the respondent as regards orders of 6th December 2013 not in contempt of court and with regard to orders of 21st January 2014 guilty of contempt of court and accordingly cited for the said contempt of court. In the premises, I impose penalty and orders as follows:

- a. **That the respondent, professor Mabel Imbuga as the cited contemnor be and is hereby pay a fine of Kshs.500,000.00 (five hundred thousand Kenya Shillings) for contempt of court or in default be committed to civil jail at Nairobi Women’s Prison for thirty (30) days;**
- b. **That the respondent Professor Mabel Imbuga as the contemnor be and is hereby ordered to forthwith and with immediate effect purge this contempt of court; and**
- c. **The costs of this application shall be met by the respondent as the contemnor.**

Dated, delivered at Nairobi and signed the 9th day of May 2014.

M. Mbaru

JUDGE

In the presence of:

Lilian Njenga: Court Assistant

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