



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA**

**(BIMA TOWERS)**

**PETITION NO. 342 OF 2014**

**IN THE MATTER OF ARTICLES 1, 2, 3,19,20,21,22,23,47 OF THE CONSTITUTION OF  
KENYA**

**IN THE MATTER OF THE CONTRAVENTION OF FUNDAMENTAL RIGHTS AND  
FREEDOMS**

**AND**

**IN THE MATTER OF THE COUNTY GOVERNMENT ACT**

**AND**

**IN THE MATTER OF THE EMPLOYMENT ACT**

**BETWEEN**

**WALID KHALID..... PETITIONER**

**versus**

**THE COUNTY ASSEMBLY OF MOMBASA..... 1<sup>ST</sup> RESPONDENT**

**THE SPEAKER COUNTY ASSEMBLY OF MOMBASA.....2<sup>ND</sup> RESPONDENT**

**THE GOVERNOR COUNTY GOVERNMENT OF MOMBASA..... 3<sup>RD</sup> RESPONDENT**

**RULING**

**Background**

1. On 28 July 2014 this Court granted orders injuncting the 1<sup>st</sup> and 2<sup>nd</sup> Respondent from presenting to the 3<sup>rd</sup> Respondent recommendations for the impeachment of the Petitioner pending *inter partes* hearing of a motion application dated 25 July 2014.
2. The orders were extracted and issued on 28 July 2014, and according to the affidavit of service sworn by Alfred Soita Paul on the same date and annexed to the present motion, the Respondents acknowledged service of the orders.
3. On 30 July 2014, after the service of the orders granted on 28 July 2014, the 3<sup>rd</sup> Respondent purported to remove the Petitioner from the office of County Executive Committee member for

- Finance and Planning. The letter of removal instructed him to hand over office immediately.
4. This latter action by the 3<sup>rd</sup> Respondent has now prompted the present motion by the Petitioner.
  5. The motion was filed on 31 July 2014 just before the vacation for Superior Courts commenced while judges of the Industrial Court and other judicial officers were attending a function and therefore it could not be heard until today.
  6. The Court is of the view that in the circumstances of the case and to do substantive justice to the parties, it is properly seized of jurisdiction to hear and determine the application during the vacation.

### **Present motion**

7. The motion the subject of this ruling is the one dated 31 July 2014 and filed the same day.
8. The Court is satisfied on the basis of the reasons and grounds set out in the certificate of urgency that the motion is urgent and therefore certifies the motion as urgent and fit for admission for hearing during the vacation.
9. The Motion seeks some 12 substantive orders but Mr. Wafula for the Petitioner at the first instance seeks prayers 2, 3, 9 and 13.
10. There is sufficient material placed before Court to show that the orders issued on 28 July 2014 restraining the Respondents from proceeding with the impeachment process were served on them on 28 July 2014.
11. The 3<sup>rd</sup> Respondent thereafter moved on 30 July 2014 to purport to remove the Petitioner from office of County Executive Committee member for Finance and Planning.
12. On the face of it, the action of the 3<sup>rd</sup> Respondent flies in the face of the orders of the Court issued on 28 July 2014. The Respondents had knowledge of the orders. They were served with the orders. There is clear evidence of disobedience with peremptory orders of the Court.
13. All state organs and officers are duty bound to comply with orders of the Court. The jurisprudence which is now developing is that knowledge of a court order would be sufficient unlike what obtained previously that there had to be personal service.
14. There would be no need to have Courts whose orders are disregarded by those persons who have been entrusted with public office and who are duty bound to observe the constitutional norms which form the fabric of the type of society Kenyans yearn for. That society must not be a society of the future but the present.
15. The Court is satisfied that the Petitioner has made out a case for the grant of conservatory orders pending *inter partes* hearing.
16. The Court therefore orders that
  - i. A conservatory order do issue staying and or suspending the decision of the 3<sup>rd</sup> Respondent communicated through letter dated 30 July 2014 purporting to remove the Petitioner from office.
  - ii. The motion be served for *inter partes* hearing on 6 August 2014 when the application dated 25 July 2014 comes up for hearing.
  - iii. Pending extraction of a formal order, this ruling be served upon the Respondents.
  - iv. Costs to abide the main Petition

**Delivered, dated and signed in open Court in Mombasa on this 1<sup>st</sup> day of August 2014.**

**Radido Stephen**

**Judge**

**Appearances**

Mr. Wafula instructed by Cootow & Associates for Petitioner