



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

MISCELLANEOUS APPLICATION NO. 17 OF 2014

ANTHONY MURITU NJOROGE.....APPLICANT

v

COMMISSIONER OF POLICE.....1ST RESPONDENT

PERMANENT SECRETARY, MINISTRY

OF INTERNAL SECURITY2ND RESPONDENT

HON. ATTORNEY GENERAL.....3RD RESPONDENT

RULING

1. Before Court is a Notice of Motion seeking mainly one substantive order,

THAT this Honourable Court do grant leave to the applicant herein to commence contempt proceedings against the respondents.

2. The motion is predicated on section 5 of the Judicature Act, section 1A, 1B and 3A of the Civil Procedure Act and order 51(1) of the Civil Procedure Rules, the grounds set on the face of the motion and the supporting affidavit of Anthony Muritu Njoroge.
3. The genesis of the motion is that Ongaya J on 13 June 2014 in Nakuru Industrial Cause No. 32 of 2013 ordered that the Applicant *do report to the Inspector General of Police on 16 June 2014 for deployment, and that he be paid all statutory benefits with effect from 1 August 2013.*
4. The aforesaid order, according to an affidavit of service sworn by one Ronald Njuguna on 16 June 2014 was served upon one Mora of the 1st Respondent's office.
5. A decree in respect of Nakuru Industrial Cause No. 32 of 2013 was however not annexed to the motion.
6. From the material placed before Court, it is apparent that the 1st Respondent was served with an order requiring it to reinstate the Applicant on 16 June 2014. The said Respondent is stated to have failed to comply with the order, hence this application.
7. The statutory basis for contempt of Court currently is section 5 of the Judicature Act and section 63(c) of the Civil Procedure Act. The current Constitution, unlike the repealed Constitution does not provide for contempt proceedings.
8. Section 5(1) of the Judicature Act provides that

The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.

9. The applicable contempt law in Kenya is therefore what obtains in England at the time of filing of the current motion.
10. The Civil Procedure (Amendment No. 2) Rules, 2012 came into force in England on 1 October 2012 (the rules are contained in the Second Supplement to the 2012 Whitebook). The rules replaced in entirety Order 52 of the Rules of the Supreme Court which provided for *Applications and Proceedings in Relation to Contempt of Court*.
11. Under Rule 81.4 of the rules, an application notice should be made in the proceedings in which the decree or order not complied with was made.
12. According to aforesaid rules in England, leave or permission of Court is not required where the breach complained of emanates from breach of a court order or judgment.
13. The Court of Appeal had occasion to consider the applicable procedure in Kenya in regard to citing for contempt for breach of court orders in ***Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others (2014) eKLR*** and held that leave is not required to bring a contempt application where there is complaint of breach of a court order like in the instant case.
14. In the circumstances, the Court finds and holds that the Applicant does not require leave to commence contempt proceedings against any of the Respondents.
15. For purposes of the record the Court observes that an application for contempt should be filed in the suit in which the breached order was issued and not under a miscellaneous application or separate suit.
16. The upshot is that the Notice of Motion dated 11 September 2014 and filed in Court on 24 September 2014 is incompetent and is struck out with no order as to costs.

Delivered, dated and signed in open Court in Nakuru on this 10th day of October 2014.

Radido Stephen

Judge

Appearances

For Applicant Ms. Wambugu instructed by Ikua, Mwangi & Co. Advocates