



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 120(N) of 2009**

**CHRISPINUS NGAYO MUSUNDI..... CLAIMANT**

**VERSUS**

- 1. THE ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**  
**2. THE PUBLIC SERVICE COMMISSION..... 2<sup>ND</sup> RESPONDENT**

**RULING**

This claim arises out of execution of an award of this Court by Hon. Justice Isaac E.K. Mukunya (as he then was) sitting with Mr. Nashon N. Udoto and Mr. J.M. Kilonzo as members on 1<sup>st</sup> July 2011. The Court entered judgement for the Claimant against the Defendant in the sum of Shs.875,235, a monthly pension of 8,972.00 and three months' salary as compensation.

The application before Court is by Notice of Motion dated 2<sup>nd</sup> May 2012, and made under Section 3(1) (2) (3), 4(2), 12(3) (iii), (viii), 12(4) and Section 13 of Industrial Court Act 2011, Order 52 Rule 2(3) of the Supreme Court of England Practice and Procedure of Rules, Section 5(1) of the Judicature Act and all enabling provisions of the law.

The application seeks the following orders:-

1. **THAT** the Attorney/General, the Permanent Secretary Ministry of Finance and the Secretary to the Public Service Commission be summoned before Court to show cause why they should not be punished for being in contempt of this Court's Decree by refusing to implement the said decree.
2. **THAT** this Honourable Court do find and hold the Attorney General, the Permanent Secretary Ministry of Finance and the Secretary to the Public Service Commission to be in contempt of this Court's judgement and decree issued on the 1<sup>st</sup> day of July 2011 and served upon the 1<sup>st</sup> and 2<sup>nd</sup> Respondent on the 21<sup>st</sup> September 2011 and issue such appropriate punishment orders inclusive of their detention unless the contempt is purged within a specified time frame.
3. **THAT** cost of this application be borne by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

The application is supported by the affidavit of Chrispinus Ngayo Musundi, the Claimant and on the following grounds:-

- (a) **THAT** judgement was entered in favour of the Claimant/Applicant in the present cause on 1<sup>st</sup> July 2011.

- (b) **THAT** the Claimant's Advocates duly extracted a decree, processed a Certificate of order against the Government and obtained a certified copy of the judgement with a view to having the decretal sum paid by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as ordered by Court.
- (c) **THAT** on the 21<sup>st</sup> September 2011 the said documents were served upon the 1<sup>st</sup> and 2<sup>nd</sup> Respondents at Sheria House Nairobi together with a covering letter requesting for the processing of the Claimant's dues.
- (d) **THAT** since then the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have not shown any inclination towards processing the Claimant's payment and have studiously remained silent about the matter.
- (e) **THAT** unless and until discharged, Court orders have to be obeyed by persons to whom they are directed at more so by Government operatives as in this case.
- (f) **THAT** the Honourable Court's dignity runs the risk of being lowered unless the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are compelled to obey the Court's orders.
- (g) **THAT** this application is brought in the interest of justice and fairness.

In the replying affidavit sworn by Bernadette Mwiwaki Nzioki, Secretary of the Public Service Commission sworn on 6<sup>th</sup> April 2012 and filed in Court on 17<sup>th</sup> October 2012, it is deponed that the Attorney General had instructions to appeal against the judgement and had applied for certified copies of proceedings and judgement which had not been supplied. She further depones that she had not been served personally with any order or penal notice, that no certificate of order for payment of money by Government has been issued as provided under the Government Proceedings Act and that the application is premature and should await the outcome of the appeal.

The parties agreed to proceed by way of submissions.

I have considered the pleadings and submissions and I have also read the Court record.

I note that the Attorney General filed a Notice of Appeal on 7<sup>th</sup> July 2011, only 6 days after the award. I also note that they have since obtained proceedings and judgement and filed an appeal in the Court of Appeal. They have also filed an application for stay of execution which was heard ex-parte on 4<sup>th</sup> December 2012 when they were granted temporary stay pending filing of a similar application in the Court of Appeal.

It is my opinion that all these developments have changed the circumstances as they obtained on the date of filing this application so much that the application may have been overtaken by events.

Be that as it may, contempt proceedings are quasi criminal in nature. For a contemnor to be summoned to Court to show cause why contempt proceedings should not be instituted against him, the contemnor must be named and served in person. The service should include a penal notice.

In the present case, 3 persons are named in their official capacity. One of them is not even a party to the proceedings and has not been served. This is the Permanent Secretary in the Ministry of Finance. The Court cannot grant orders to summon an officer whose name has not been disclosed and who has not been served with the application which he is expected to respond to.

I also find the effort made by the Claimant to pursue the execution of the decree to be insufficient. Only one letter was written on 19<sup>th</sup> September 2011. It is alleged that a decree was extracted and a certificate of order against the Government obtained and served upon the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

The second Respondent has denied the same. No copy for the decree and the certificate of order against

the Government is attached to the application nor has evidence of service upon the 1<sup>st</sup> and 2<sup>nd</sup> Respondents been attached to the application.

For the foregoing reasons, I find that the Applicant has not made out a case to justify the prayers sought.

The application is dismissed.

Each party shall bear its costs.

Orders accordingly.

**Read in open Court and signed on this 2<sup>nd</sup> day of April, 2013.**

**HON. LADY JUSTICE MAUREEN ONYANGO**

**JUDGE**

Ms. Akhaabi for Namada for

**In the presence of:-** \_\_\_\_\_ Claimant

Mr. Kamau for the

\_\_\_\_\_ Respondent