



REPUBLIC OF KENYA
INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 1052 OF 2013

(Before D.K.N. Marete)

DR. IBRAHIM HAJI ISSAKCLAIMANT

Versus

KENYA MEAT COMMISSION1ST RESPONDENT

JAMES TENDWA2ND RESPONDENT

RULING

This is an application for committal to civil jail of the respondents brought to court by the Claimant/Applicant vide an application dated 5th August, 2013 and filed on the following day. It seeks the following orders of court;

1. *That the Honourable Court be pleased to find that Kenya Meat Commission and James Tendwa (the 1st and 2nd Respondent/Contemnors) are in contempt of court for disobedience of the Court Orders issued on 12th July, 2013.*
2. *That upon grant of prayer (1) above, the Honourable Court be pleased to impose a penalty of a fine of Kshs.10,000,000.00 against the Kenya Meat Commission (the 1st Respondent/Contemnor) and in default of payment thereof all its movable and immovable assets including but not limited to land and buildings be attached and sold to satisfy the penalty for contempt of court.*
3. *That upon grant of prayer (1) above, the Honourable Court be pleased to issue an order to commit James Tendwa (the 2nd Respondent/Contemnor) to civil jail at Industrial Prison for 6 months for contempt of court.*
4. *That the Honourable Court be pleased to issue an order to compel James Tendwa (the 2nd Respondent/Contemnor) to unconditionally vacate and with immediate effect the office of the Managing Commissioner/Chief Executive Officer and to forthwith cease acting as the Managing commissioner/Chief Executive Officer of the Kenya Meat Commission.*
5. *That the Honourable Court be pleased to issue an order to compel Kenya Meat Commission (the 1st Respondent/contemnor) to unconditionally and immediately allow and facilitate the Claimant/Applicant's access and resumption of his office and duties as the Managing Commissioner/Chief Executive Officer.*
6. *That the Honourable Court be pleased to issue the Kenya Meat Commission (the 1st*

Respondent/contemnor) to pay to the Claimant/Applicant all his outstanding salary and benefits.

- 7. That the Honourable Court be pleased to issue an order restraining or prohibiting the Kenya Meat Commission and James Tendwa (the 1st and 2nd Respondent/Contemnors) and all the staff, employees or servants of the Kenya Meat Commission from engaging in any or all activities that would otherwise undermine the Court Orders issued on 12th July, 2013 or any or all further orders in respect of the Claim herein.*
- 8. That any or all staff, employees of the Kenya Meat Commission who may act in any manner as to undermine the orders issued by the Honourable Court on 12th July, 2013 be deemed to be in contempt of court and that upon their identification be committed to civil jail at Industrial Area Prison for a period of 6 months.*
- 9. That the costs of this application be borne by the 1st and 2nd Respondent/Contemnors.*

The application is to be grounded on the following;

- 1. On 11th July, 2013 the Honourable Court granted interim orders to stay the Respondent's decision of 28th May, 2013 suspending the Claimant from duty and to say the appointment of James Tendwa to act in the office of Managing Commissioner/Chief Executive Officer of the Respondent pending the hearing and determination of the Application dated 10th July, 2013.*
- 2. On 15th July, 2013 the Kenya Meat Commission was duly served with the court order aforesaid through its Company Secretary whereupon both the Kenya Meat Commission and James Tendwa became personally aware of the same.*
- 3. On 18th July, 2013 the Kenya Meat Commission came on record through Lumumba & Lumumba Advocates and duly filed a Replying Affidavit on 22nd July, 2013.*
- 4. On numerous occasions since 16th July, 2013 the Kenya Meat Commission and James Tendwa have obstinately denied the Claimant/Applicant access to his office and or his outstanding June and July salary and benefits.*
- 5. In spite of personal knowledge of the Court Order aforesaid, James Tendwa unlawfully continues to act in the office of the Managing Commissioner/Chief Executive Officer of the Kenya Meat Commission.*
- 6. On 24th July, 2013 James Tendwa issued a press statement and unequivocally stated that the Claimant/Applicant is still on suspension whilst investigations are going on and that communication on the verdict whereof will be done through the Ministry of Agriculture, Livestock and Fisheries.*
- 7. On 26th July, 2013 the statement by Kenya Meat Commission and James Tendwa was published in the Star newspaper at page 16 under the heading **"KMC says Haji still suspended"**.*
- 8. Kenya Meat Commission and "James Tendwa are not only in contempt of Court but have also violated **Article 232(1)(f) of the Constitution of Kenya and Section 9(a), (b), 10 and 19 of the Public Officer Ethics Act, 2003** by misleading the public that the Claimant is still on suspension and that he had not been reinstated as the orders granted on 12th July, 2013 were not extended on 22nd July, 2013 and James Tendwa is therefore unfit to hold public office.*
- 9. In spite of being aware of the Court Order aforesaid, the Respondent/Contemnors have willfully disobeyed the same with impunity and have demonstrated their unwillingness to comply therewith.*
- 10. In the circumstances, committal proceedings are the only and most efficacious and efficient mode*

of compelling the Contemnors to obey the Court Order and or to purge the contempt and to protect the dignity of the Honourable Court, the sacrosanctity of its orders and the rule of law.

11. *The Claimant/Applicant has no other way of enforcing the said orders.*

12. *The Claimant/Applicant served the Attorney General with Notice of Intention to apply for leave to institute contempt proceedings.*

13. *The Honourable Court has granted the Claimant/Applicant leave to institute contempt proceedings hereof.*

It is supported by the supporting affidavit of Dr. Ibrahim Haji Issak the Claimant/Applicant in this cause sworn on 5th August, 2013.

The Respondent opposed the application and filed Grounds of Opposition dated 7th August, 2013 and filed on the same date on grounds that;

1. *The Application is incurably defective and orders sought are incapable of being issued as prayed.*
2. *The Order purported to have been disobeyed was not served personally upon the alleged contemnors hereinafter referred to as the 1st and 2nd Respondents.*
3. *The said Order was not served upon the 1st and 2nd Respondents together with a **Penal Notice** as mandated by the Law, and precedent on applications of such nature.*
4. *The Applicant/Claimant has come to court with unclean hands in the sense that he has contravened the **sub-judice** rule in respect to the matters in question on several occasions.*
5. *The Applicant/Claimant has not proved beyond reasonable doubt the guilt of the 1st and 2nd Respondents in respect to the allegations of contempt of court.*

The genesis of the current application is an application by way of Notice of Motion dated 10th July, 2013 whereby the applicant approached this court for various orders intended to preserve his position as the Chief Executive Officer of the 1st Respondent. The court issued the following orders;

1. *That this application be certified as urgent and heard ex parte in the first instance.*
2. *That pending the hearing and determination of this application or further orders of this court, the court hereby grants an interim order to stay the Respondent's decision of 28th May, 2013 suspending the Claimant/Applicant from duty.*
3. *That pending the hearing and determination of this court or until further orders of court, this court hereby orders the grant of an interim order to stay the appointment of James Tendwa to act in the office of Managing Commissioner/Chief Executive Officer.*
4. *That the applicant be and is hereby ordered to serve this application and orders of court to the Respondent forthwith but not later than the close of the day on 15th July, 2013.*
5. *That this application be heard inter parties on 22nd July, 2013 at 900 hours.*

The Claimant/Applicant claims that these have been derisively disobeyed by the respondent and therefore this application.

The applicant came back to court on 31st July, 2013 under a Certificate of Urgency seeking *inter alia*, leave to institute contempt of court and committal to civil jail of the respondent for continued disobedience of court orders. Leave was therefore granted and therefore the current application.

In the course of these proceedings, various other but related applications were filed and dealt with by court until the 13th August, 2013 when the following orders of court were issued;

1. *The Notice of Motion dated 6th August, 2013 seeking to set aside the orders of the court issued on 12th July, 2013 is hereby stayed pending hearing of the application for contempt.*
2. *The Respondent is granted leave to file submissions on the application for contempt within the next 2 days.*
3. *Matter to be mentioned on 16th August, 2013 at 900 hours for further directions.*
4. *The personal attendance of James Tendwa is required.*

When the matter ultimately came for mention on 16th August, 2013, the court directed that the same be heard before this court on 16th August, 2013.

On 27th August, 2013, Mr. Langat, counsel for the respondent sought leave of court to initiate negotiations for an out of court settlement of the issues in dispute. Mr. Gachuba, counsel for the applicant was agreeable on a rider that the orders of court are executed and enforced. The Court awarded the parties two (2) days to undertake negotiations and report back for a mention on 29th August, 2013.

On 29th August, 2013, Mr. Gachuba submitted that the talks had collapsed and the matter was fixed for hearing on 19th September, 2013.

On 19th September, 2013, Mr. Langat sought leave and time for further negotiations and this was granted and the matter set for mention on 24th September, 2013 when Mr. Gachuba reported and submitted that dialogue and negotiations had been a non-starter and therefore the need for a ruling by court on the basis of the pleadings and submissions filed in court by the parties. And this is the day of reckoning.

The Claimant/Applicant's written submission reiterated his position and case as set out in application;

1.

(b) On 15th July, 2013 the Kenya Meat Commission was duly served with the court order aforesaid through its Company Secretary whereupon both the Kenya Meat Commission and James Tendwa became personally aware of the same.

(c) On 18th July, 2013 the Kenya Meat Commission came on record through Lumumba & Lumumba Advocates and duly filed a Replying Affidavit on 22nd July, 2013.

2. *On numerous occasions since 16th July, 2013 the Kenya Meat Commission and James Tendwa have obstinately denied the Claimant/Applicant access to his office and or his outstanding June and July salary and benefits.*
3. *In spite of personal knowledge of the Court order aforesaid, James Tendwa unlawfully continues to act in the office of the Managing Commissioner/Chief Executive Officer of the Kenya Meat Commission.*
4. *On 24th July, 2013 James Tendwa issued a press statement and unequivocally stated that the Claimant/Applicant is still on suspension whilst investigations are going on and that communication on the verdict whereof will be done through the Ministry of Agriculture, Livestock and Fisheries.*
5. *On 26th July, 2013 the statement by Kenya Meat Commission and James Tendwa was published in*

the Star newspaper at page 16 under the heading: “KMC says Haji still suspended”.

The applicant submits that the respondents, having been duly served with the court orders on 15th September, 2013 became aware of the orders of court and therefore failure to obey and comply is merely willful disobedience. The respondents have not given any reason for disobedience and do not appear remorseful or apologetic. To them, it is business as usual. They are therefore guilty of contempt of court and must be punished in order to safeguard the authority and dignity of court and the rule of law.

The concept of the rule of law is the modicum of operations in civilized societies. It entails a situation where all action by public office and officers, private citizens and corporations inclusive of government are governed by the law in their operations and everyday life. Anything less than this would bring about chaos, disorder and apathy not desirable in organized systems of governance. It would nurture impunity, a deadly monster to the rule of law and order.

The law on contempt of court is clearly and abundantly set out in the recent authority of **Teachers Service Commission Versus Kenya National Union of Teachers, Wilson Sossion and Mudzo Nzili, Industrial Court of Kenya Petition Cause No. 23 of 2013** (unreported) where my sister Ndolo, J. elaborately set out the case for contempt of court. This is extensively cited in submissions by the applicant in this cause as hereunder;

36. *Black’s Law Dictionary (Ninth Edition) defines contempt of court as:*

“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”

37. *In the case of Johnson vs Grant, 1923 SC 789 at 790 Lord President Clyde stated that:*

“...The law does not exist to protect the personal dignity of the judiciary nor the private rights of parties or litigants. It is not the dignity of the court which is offended. It is the fundamental supremacy of the law which is challenged.”

38. *The reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed.*

39. *A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.*

40. *In the case of Kenya Tea Growers Association Vs Francis Atwoli and 5 Others [2012] eKLR Lenaola J cited with approval the case of Clarke and Others Vs Chadburn & Others [1985] 1All E.R (PC), 211 in which the court observed that:*

“I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, willful 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.”

41. *As was held in the case of Econet Wirelss Ltd Vs Minster for Information & Communication of Kenya & Another [2005] eKLR*

“Where an application for committal for contempt of court orders is made the court will treat the same with a lot of seriousness and urgency and more often will suspend any other proceedings until the matter dealt with and if the contempt is proven to punish the contemnor or demand that it is purged or both. For instance an alleged contemnor will not be allowed to prosecute any application to set aside orders or take any other step until the application for contempt is heard. The reasons for this approach are obvious – a contemnor would have no right of audience in any court of law unless he is punished or purges the contempt.

The respondents, in their submissions on contempt dated the 14th August, 2013 and filed on the same date oppose the application. The first ground of opposition is that the order purported to have been discharged was not personally served upon the 2nd Respondent. Secondly, the said order was not served on the 2nd respondent together with a penal notice as mandated by the law and precedent on applications of this nature.

The respondents opine that the Claimant/Applicant obtained a court order and kept to himself and did not serve the respondent as expected in law. They further submit that personal service is required for the orders of court to be properly served. There is, in the circumstances, no willful disobedience of a court order and therefore this application must fail.

The respondent further submits that this application is not competent to sustain a case for committal to civil jail. It fails to comply with the substantive provisions of the law and process in that the applicant has not effected service of the order together with a penal notice as per the requirements of the law and procedure on applications of this nature.

The respondent submits that the Claimant/Applicant failed to personally serve the orders of court to the respondent to occasion a case for contempt of court. The orders need not have been served on new parties but parties to the suit including the chairperson of the 1st respondent who had indeed signed the suspension letter or even any board members. The respondents have not discharged any court order or are even aware of the order, or at all.

The respondents further submit that the application by the claimant is incompetent in facilitating a committal of the respondent to civil jail in that it is not brought under the substantive provisions of law which is indication of failure to strictly comply with the procedural requirements.

The respondent relied and cites various authorities all of which rubbish the quest for committal to civil jail of the respondents by the applicant.

The issues for determination therefore are;

1. Whether the Respondent/Contemnors are guilty of contempt of court.
2. Whether the application is competent.
3. Whether personal service on the Respondent/Contemnors is mandatory.
4. Whether the Respondent/Contemnors ought to have been served with a Penal Notice before institution of contempt of court proceedings.

The sequence of events leading to contempt of court per the claimant’s submissions are as follows;

1. On 12th July, 2013 this court stayed the suspension of the Claimant/Applicant and also stayed the appointment of the 2nd Respondent/Contemnor from appointment pending hearing and determination of this suit.
2. On 15th July, 2013 the orders of court were served onto the respondents by the Claimant/Applicant.
3. On 22nd July, 2013 the Respondents/Contemnors filed a Replying Affidavit on the matter.

4. Since 15th July, 2013 the 2nd respondent has continued to act in the office of the Managing Director/Chief Executive Officer of the 1st respondent in flagrant disregard of the orders of court.
5. On 24th July, 2013, the respondent issued a press statement and stated that the Claimant/Applicant is still on suspension whilst investigations are going on and that communication on the verdict whereof will be done through the Ministry of Agriculture, Livestock and Fisheries.
6. On 26th July, 2013 the said press statement was published by the Star newspaper at page 16 thereof under the heading “KMC says “Haji still suspended.”

In the case of **Teachers Service Commission Versus Kenya National Union of Teachers & 2 Others, Industrial Court Petition No. 23 of 2013** the Honourable court relied on the following authorities;

62. *In the Mutitika Case (supra) the Court held that:*

“A person one who, knowing of an injunction, or an order of stay willfully does something, or causes others to do something, to break the injunction or interfere with the stay is liable to be committed for contempt of court as such person has by his conduct obstructed justice.”

In the case of Econet wireless Kenya Limited v Minister for Information Communication of Kenya & Another (2005) eKLR the High Court held that:

... It is a fundamental principle of the Rule of Law that court orders must be obeyed. The importance of this principle has been stated in many decisions in our courts and in particular the Court of Appeal.

To demonstrate the importance and seriousness with which the courts will deal with any conduct that may be deemed or found to be in contempt of court of prejudicial process, it may be necessary to look at some decisions of the subject.

In Gubabchand Popatial Shah & Another, Civil Application No. 39 of 1990 (unreported), the Court of Appeal said:

“...It is essential for the maintenance of the Rule of Law and good order that the authority and dignity of our courts are upheld at all times. This court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnor...”

In Hadkinson v Hadkinson (1952) 2 All ER 567, it was held that:

It is plain and unqualified obligation of every person against or in respect of who an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.

As to the competency of the application, the applicant submits that the application had complied with the law on contempt proceedings as espoused under S.(5)(1) of the Judicature Act, Chapter 8, Laws of Kenya as follows;

1. *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.*
2. *An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.*

The issue of contempt of court is fully illustrated in the earlier jurisprudence as cited in the authority of **Teachers Service Commission Versus Kenya National Union of Teachers & 2 Others, Industrial Court Petition No. 23 of 2013**, 36 – 41 (supra.)

On the issue of personal service, the applicants, citing the case of Teachers Service Commission (supra), submitted as follows;

42. *I will now deal with the issue of service of the orders issued by this Court on 1st July 2013. It is the Respondent's case that they were not served with the said orders until 8th July, 2013. They could not therefore be accused of being in contempt of orders they were not aware of.*

43. *The Applicant on the other hand told the Court that prior to 8th July 2013, attempts to effect service on the Respondents were thwarted by the Respondents themselves. This is what the contested affidavit of service sworn by Alex Mutua on 2nd July 2013 sought to advance.*

44. *The importance of personal service in contempt proceedings, which are quasi-criminal in nature need not be overemphasized.*

45. *The Halsbury's Laws of England (Fourth Edition) volume 9 at page 37 provide as follows:*

"As a general rule, no order of court requiring a person to do so abstain from doing an act may be enforced unless a copy of the order has been served personally on the person required to do or abstain from doing the act in question." [Emphasis added].

46. *Similarly, the explanatory notes in Order 52 Rule 3(1) of the England Supreme Court Practice Rules which are applicable in our jurisdiction provide that:*

"No order will normally be issued for the committal of a person unless he has been personally served with the order, disobedience to which is said to constitute the contempt, or, if, the order is directed to a group of persons or a corporation, some appropriate member has been personally served." [Emphasis added]

47. *In my view, the words "**general rule**" and "**normally**" in these provisions are instructive. To my mind, the import here is that in the normal scheme of things, personal service in matters of contempt is a requirement. However, if a man were to barricade himself or go into a bunker from where he issues communication to the effect that he in fact knows about the existence of a court order and will not obey it, surely the lack of personal service would not nullify an otherwise competent application for committal for contempt of court.*

48. *To that extent I agree with the ruling by Lenaola J in the case of Basil Criticos vs Attorney General and 8 Others [2012] eKLR that:*

"...the law has changed and as it stands today knowledge supersedes personal service....where a party clearly acts and shows that he had knowledge of a Court Order, the strict requirement that personal service must be proved is rendered unnecessary".

From the foregoing, it comes out clearly that contempt of court proceedings and applications are delicate and criminal in nature and would impose criminal penalties if a conviction ensued. In the instant case, the claimant/applicant's case is that the respondents were served with the court orders but continue to disobey and disregard the same willfully and deliberately. On the contrary, the respondents deny service or even personal service and contend that therefore they are not in contempt of court. They further submit that the application before court is incompetent and therefore not capable of effecting the orders of court sought.

The law has developed to the extent that the earlier conception of service has now been enhanced. This position is illustrated in the Mutitika case above cited. Knowledge of court orders in itself comprises of adequate ground for a finding on contempt of court. In the instant case, and during the proceedings, counsel for the respondent on 27th August, 2013, applied for fourteen (14) days leave to negotiate and come up with a way forward on the issues in dispute. Counsel for the applicant was all agreeable conditional upon execution and enforcement of the court order. This collapsed and hearing was set for

19th September instant when again Mr. Langat for the respondent called for more time to give dialogue a chance and the court granted leave to the parties up to 24th September, 2013 when it was reported that dialogue had totally collapsed and therefore the need for the court to rule on the matter.

At all this time during the proceedings and even search for dialogue, the respondents must have been aware of the court orders and therefore cannot be heard to say that they had not been served or were not aware of the court orders. This is demonstrated by their conduct during the proceedings. All sense points out to a clear situation where the respondents through process service and other court process and proceedings were always aware of the orders of court. Lack of compliance with the orders of court can only therefore be willful defiance of the orders of court and is not sustainable.

The four issues for determination as set out are adequately covered and answered as herein above. The respondents have out rightly defied the orders of court on the pretext that the application is incompetent in that it was not personally served on themselves or even a penal notice issued and served on them. All these crumble on the wayside in favour of a case for contempt of court.

I therefore find the respondents guilty of contempt of court and accordingly cite them for the said contempt of court. In the premises, I impose penalty as follows;

1. That the 1st respondent/contemnor, the Kenya Meat Commission be and is hereby ordered to pay a fine of Kshs.10,000,000.00 (read Ten Million shillings) fine for contempt of court
2. That in default of payment of the said amount of Kshs.10,000,000.00 (Ten Million shillings only) as fine, the movable and immovable assets of the 1st respondent/contemnor including but not limited to land and buildings be attached and sold in satisfaction of the penalty for contempt of court.
3. That the 2nd respondent/contemnor, James Tendwa be and is hereby committed to civil jail at Industrial Area Prison for ninety (90) days or in the alternative pay a fine of Kshs.2,000,000.00 (Two Million only.)
for contempt of court.
4. That the 2nd respondent/contemnor be and is hereby ordered to forthwith vacate the office of the Managing Commissioner/Chief Executive Officer of the 1st respondent with immediate effect.
5. That the 1st respondent/contemnor, the Kenya Meat Commission be and is hereby ordered to immediately and unconditionally allow and facilitate the claimant/applicant's access and resumption of office and duties as Managing Commissioner/Chief Executive Officer of the 1st respondent.
6. That the 1st respondent/contemnor be and is hereby ordered to pay the claimant/applicant all his outstanding salary and benefits with immediate effect.
7. That the respondents/contemnors be and are hereby ordered to forthwith and with immediate effect purge this contempt of court.
8. That the costs of this application shall be borne by the respondents/contemnors.

Dated, delivered and signed the 9th day of October, 2013.

D.K.Njagi Marete

JUDGE

Appearances:

1. Mr. Gachuba instructed by Onyoni Opini & Gachuba Advocates for the claimant/applicant.
2. Prof. Lumumba and Langat instructed by Lumumba & Lumumba Advocates for the respondents.