



REPUBLIC OF KENYA

INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE 538 of 2011

SISTER BERNADETTE MUTHINA NZIOKI.....
.....**1ST APPLICANT**

SISTER TERESIA MUMBE.....
.....**2ND APPLICANT**

SISTER ANNE NGARUIYA.....
.....**3RD APPLICANT**

SISTER NICOLETA NGOIRI.....
.....**4TH APPLICANT**

SISTER ASSUMPTA.....
.....**5TH APPLICANT**

SISTER MATILDA KAVINYA.....
.....**6TH APPLICANT**

SISTER TERESIA MUENI.....
.....**7TH APPLICANT**

SISTER FELISTAS MUTIO.....
.....**8TH APPLICANT**

Vs.

ST. MARY'S MISSION HOSPITAL.....
.....**1ST RESPONDENT**

DR. MARANGU RUCHA.....
.....**2ND RESPONDENT**

DR. WALTER KONYA.....
.....**3RD RESPONDENT**

MR. SETH MANERA.....
.....**4TH RESPONDENT**

RULING

The Application before the Court is the Chamber Summons dated 5th June 2012. It is expressed to be brought under Section 5 of the Judicature Act Cap 8 of the Laws of Kenya and Order 52 Rule 2 of the Supreme Court of England. In it, Mrs. Wambugu acting for the 1st to 8th Respondents seeks orders of committal against the 2nd, 3rd and 4th Respondent. It is supported by an affidavit of Sister Felistas Mutio the 8th Claimant herein. The main thrust of the application is that the Orders granted by the Hon. Isaac Mukunya on 27th April 2012 have been disobeyed and blatantly ignored by the 2nd, 3rd and 4th Respondents respectively.

The Application is opposed by the 2nd, 3rd and 4th Respondent who are all represented by Mr. Mindo advocate. The 1st Respondent is represented by the Federation of Kenya Employers and Mr. Masese and Mr. Okeche appeared for the 1st Respondent during the hearing of the application.

The court heard the counsels at length when the matter came up for hearing on 24th July 2012. Mrs. Wambugu submitted that the terms of the order of the court are unambiguous and clear. She averred that the 2nd, 3rd and 4th Respondents have obstructed the 1st to 8th Claimants in their quest to return to work in terms of the Order of the court. The Applicants have exhibited the decree of the Court which was served on the 2nd, 3rd and 4th Respondents. She submitted that the 2nd, 3rd and 4th Respondents were in contempt and should accordingly be punished. Authorities were cited to court in support of the Claimants contention. Reliance was placed on the case of **Attorney General v. Times Newspapers Ltd and Another [1991] 2 All ER 398**. The 1st to 8th Claimants also relied on the case of **Wildlife Lodges Ltd. v. County Council of Narok and Another [2005] EA 344**

In their reply, Mr. Mindo states that the Order did not require the 2nd, 3rd or 4th Respondents to do more than what they have done, which he submitted was that they have NOT interfered with the return of the Claimants to work. They have sworn affidavits which in spite of some vagueness about time, do not deny knowledge of the order of 27th April 2012.

Mr. Masese submitted on behalf of the 1st Respondent that the Court Order must be obeyed. He stated that the 1st Respondent was at all times ready to have the 1st to 8th Claimants return to work. He heaped the blame on the non-compliance with a court order on the 2nd, 3rd and 4th Respondents. He submitted that his client was ready to give an undertaking that by Friday 27th July 2012, the 1st to 8th Claimants would be at work if the Court granted the 1st to 4th Respondents time to discuss and resolve the impasse.

Coming just before the reply to the submissions of Respondents, the Court invited the Claimants to consider the proposal to settle the matter and return on 27th July 2012 to either record a settlement or proceed with Mrs. Wambugu's reply to the Respondents submissions. The Court allowed an adjournment of the hearing of the application to 27th July 2012 and ordered that the representatives of the 1st Respondent as well as the 2nd, 3rd and 4th Respondents do appear in court on Friday 27th July 2012.

When the case was called out on 27th July 2012 at around 9.30 a.m, Mrs Wambugu was not in court and Mr. Mindo indicated that she was on her way. His clients were present in court. Mr. Okeche was present for the 1st Respondent whose representatives were present as well. Some of the Claimants were also in Court. When Mrs. Wambugu arrived, the Court inquired if a settlement was ready, to which the parties stated that they had exchanged some letters but there was no resolution. Indeed it was stated that there was altercation when the 1st to 8th Respondents attempted to report to work as directed by the 1st Respondent. Mr. Masese was in court at the time these exchanges were taking place.

As no conciliation had taken place and since no settlement was forthcoming as proposed by the 1st Respondent, the Court took the reply of Mrs. Wambugu. She stated that the response by the Respondents had not diluted the submissions she had made and reiterated that this was a fit case for the Court to exercise its powers to punish for contempt.

The power to punish for contempt is provided for under the Judicature Act, cap 8 Laws of Kenya. The Section provides as follows:-

5. (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.

The case of **Attorney General v. Times Newspapers Ltd and Another** (*supra*) is a *locus classicus* on the power to punish for contempt. The contemnor in that case was **not** even a party to the initial court proceedings but was found to be in contempt. It was held that anyone who knowingly impedes or interferes with the administration of justice is guilty of contempt irrespective of whether he was named in any order of the Court nor had assisted a person against whom an order was made to breach it.

The case of **Wildlife Lodges Ltd. V. County Council of Narok and Another [2005] EA 344** was also cited in support of the Claimants case. Hon. Justice Ojwang Ag. J (as he then was) held that issues of contempt must take precedence and that court orders **MUST** be obeyed.

Under the Rules of the Supreme Court Order 24, service on a party's solicitor is sufficient to found an application for committal of the party in disobedience of the order.

In this case the 3 Respondents aver knowledge of the order but say they cannot do anything about it.

The law of contempt of court has, as its core purpose, the maintenance of the authority and the dignity of the courts.

As seen in the case of **Attorney General v. Times Newspapers Ltd and Another** (*supra*), it matters not whether you were a party or not. The submissions that there are staff members who are opposed to the return of the Claimants is itself admission that there are persons out there who are committing contempt of court and this Court would hope that they learn from this case that Court orders are to be obeyed whether you fancy the order or not. If aggrieved there is recourse provided in law – appeal, review etc.

In the administration of justice, critical and at the centre of any civilized society is the obedience of the law and orders from the courts of law. To permit any party under whatever guise an opportunity to refuse to obey an order of the court is a recipe for anarchy and chaos.

In the final analysis, the Court must be mindful of the following key considerations:-

1. The law of contempt exists to protect the administration of justice, and
2. Because the powers given to the courts to punish for contempt are very wide, this power should only be used in cases where there is a clear case of contempt beyond reasonable doubt.

The 2nd Respondent has deposed to knowledge of the Order which is the basis of this application.

Similarly the 3rd Respondent has deposed to the same though his account somewhat attempts to deny service which was effected and went further to say he opted to ignore it. What callousness. What impunity! Why would one have to wait for so called proper service when orders have been served?

The 4th Respondent has had, to his saving graces, only a minimal role to play in the dispute. He was the hand-maiden of the postmaster by making deliveries of letters. He was not involved in the management of the 1st Respondents facilities. He has not been cited as being part of the ungodly mob that chased the nuns from the 2 facilities when they reported to work. There is mention of an administration policeman manning the gate but not the 4th Respondent. In the premises, the application seeking his committal does not succeed.

Court orders are not issued so that parties can choose whether to obey them or not. The Court takes a dim view of the actions of the Respondents cited for contempt.

For avoidance of doubt, the Orders of the Court made herein on 27th April 2012 MUST be obeyed and it matters not if the contemnor is named as a party or not. The 2nd and 3rd Respondent cannot escape the liability for disobeying a Court order.

The 2nd and 3rd Respondent's are guilty beyond reasonable doubt, of committing the offence of contempt of court. In view of the foregoing I hold that the service of the Order and consequent breach commends this court to make an order of Committal of the 2nd Respondent Dr. Marangu Rucha for one month. As regards Mr. Walter Konya, this Court similarly makes an order of Committal of the 3rd Respondent for one month for the contempt of court.

The Claimants will have the costs of the Application as they have substantially succeeded.

It is so ordered.

Dated and Delivered at Nairobi this 2nd day of August 2012.

Nzioki wa Makau

JUDGE