



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 2486 OF 2016**

**(BEFORE HON. LADY JUSTICE HELLEN S. WASILWA ON 20<sup>TH</sup> DECEMBER, 2016)**

**THE COUNCIL OF GOVERNORS .....CLAIMANT/RESPONDENT**

**VERSUS**

**KENYA MEDICAL PRACTITIONERS PHARMACISTS AND DENTISTS UNION ....RESPONDENT  
/APPLICANT**

**RULING**

1. On the 1/12/2016, Hon. J. Abuodha upon hearing the Applicants herein made orders as follows:

**1. That the same be and is hereby certified urgent.**

**2. That the Strike Notice issued on 14<sup>th</sup> November 2016 be and is hereby suspended for 30 days.**

**3. That this Honourable Court directs that the dispute be subjected to inclusive process of negotiations to resolve any outstanding issues arising from the Collective Bargaining Agreement dated 27<sup>th</sup> June 2016 in such a manner and within such timeliness as this Honorable Court will direct".**

2. This order was served upon the Respondents, the Kenya Medical Practitioners, Pharmacists and Dentists Union as per the Courts directive to serve through substituted service on 7.12.2016.

3. The Respondents' officials named in this application were also issued with summons to attend Court on 13<sup>th</sup> December 2016 at 9 am. In answer to the Court summons, the 1<sup>st</sup> Respondent's officials attended Court on 13/12/2016 in the presence of their Counsel.

4. The Court gave certain directions on the filing of pleadings and also allowed consolidation of this Cause with Cause No. 2479/2016.

5. The import of the Court Order of 1/12/2016 was also explained to the Respondents and its officials present in Court. The Court categorically implored the Respondent and its officials to cease strike action immediately and give dialogue a chance as directed by the Court on 1/12/2016. This Cause was now listed for 19/12/2016.

6. As at 19/12/2016, when the Cause came up for mention for further directions, the 1<sup>st</sup> Respondents officials were absent in Court but their Counsel was present. He informed Court that the strike action had not ceased as directed but that they had filed a Preliminary Objection which they wished to argue. Counsel also informed Court that they could not have obeyed the Court order because the strike had already commenced.

7. The Applicants and the Interested Party have asked this Court to punish the Respondent and its officials for disobeying this Courts order.

8. I have examined the chronology of events in this case. It is apparent that the Respondents and its officials were aware of the Court order but they have blatantly refused or ignored to obey.

9. The principles governing contempt of Court are well elaborated in various case law and the law. See Josephine Mueni Mutunga vs. Energy Regulatory Commission & Another eKLR (2016) Praxes Namoni Saisi vs. Geothermal Development Company Limited & Another eKLR (2016), Prof Mwaniki Silas Ngare vs. John Akama & Another eKLR 2016), TSC vs. KNUT & 2 Others (2013) eKLR, Justin Kariuki Mate & Another vs., Hon. Martin Nyaga Wambora & Another Civil Application No. 24 of 2014 and Econet Wireless (K) Limited vs. Minister for Information & Communication and Another (2005) eKLR.

10. The principle has been explained as follows:

***“it is essential for the maintenance of the rule of law and order that the authority and dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plan and unqualified obligation of every person against or in respect of whom 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 to cases where persons affected by an order believe it to be irregular or void”.***

11. The principle is meant to safeguard the dignity of the rule of law as the contempt will not be against an individual litigant or the Judge as the case may be but against the unparalleled dignity of the Court.

12. President Clyde Johnson vs. Grant (1923) SC 789 at 790 stated as follows:

***“the law does not exist to protect the personal dignity of the Judiciary nor the private right 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”.***

13. Having as stated as above, it is important that this Court should punish offenders who deliberately and blatantly choose to disobey its orders. The Respondents have stated categorically that the orders couldn't be obeyed because they received the order after the strike commenced.

14. The order of the Court was to stop the strike in steps and the excuse of the Respondents cannot withstand. This Court finds that indeed the 1<sup>st</sup> Repondent and its officials are all guilty of contempt of this Courts order of 1/12/2016 and must therefore be punished accordingly.

Read in open Court this 20<sup>th</sup> day of December, 2016.

**HON. LADY JUSTICE HELLEN WASILWA**

## **JUDGE**

### **In the presence of:**

Lumallas for the Applicant – Present

Masese for Moi Teaching & Referral Hospital

Mbilo for Cabinet Secretary, Ministry of Health

Miss Chepngetich holding brief for Ngujiri for Applicant in 240/2016 (Nyeri Court)

Respondents – Absent

Chege with Wachuka for Respondents – Present



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