

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
Miscellaneous Application No. 420 of 2019
[Arising from Miscellaneous Cause No. 101 of 2018]

1. SARAH NABAWANUKA
2. MBABAZI GEORGE
3. BARENGA EPAPHRAH
4. SSERUGA JAMES GRACE :::::::::::::::::::::::::::APPLICANTS
5. KIGGUNDU PAUL
6. TUMUKUNDE HERBERT
7. TUSABE TEDDY
8. KATO GODFREY

VERSUS

1. MAKERERE UNIVERSITY
2. KIRANDA YUSUF :::::::::::::::::::::::::::RESPONDENTS
3. ABUYANG ANDREW

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The Applicants are all employees of the 1st Respondent who severally joined her services between 1988 and 2007. They were long confirmed in the University service. Yet, they were kept stagnated at the lowest rank of M15 and M13 at which they joined service. This was despite their having attained higher qualifications and job experience in the higher office of Accountant M6 to which they are deployed and continue to perform its duties meticulously.

The Applicants applied to the Appointments Board for promotion but this was illegally blocked by the Respondents' Human Resource Director. They then appealed to the Staff Appeals tribunal which failed to hear the appeal within the time allowed by law. They then Petitioned this Honourable Court.

On the 29/3/2019 Court made Orders against the Respondents. These orders were made in the presence of Respondents' Counsel. An Order of Certiorari was issued quashing the Letter dated 8th February 2018 for illegality and the Appointments Board was ordered to determine the Applicants' Application for promotion within 90 days. This was to be done with an open mind, taking into account the special circumstances of the Applicants' case.

This Application was filed after 94 days had lapsed since the Court Orders were made.

The Application seeks the following orders from court;

- 1) *The respondents be held in contempt of this Honourable court orders of 29/3/19.*
- 2) *The 2nd and 3rd respondents being officials of the 1st respondent directly charged with the implementation of the orders of the court be committed to civil prison for contempt of court.*
- 3) *The Respondents be compelled to appoint the applicants to the posts which court directed that they be considered to be appointed respectively within 90 days with effect from 29/3/2019 effective from the date of this ruling.*
- 4) *An order that the applicants be retrospectively appointed by order of court and paid all the accumulated salary and allowances at the rank they applied for to commence with the date the contempered order was made.*

- 5) *The Respondents pay the applicants UGX 1,000,000,000/= as compensation to purge the contempt of court.*
- 6) *An Order directing the respondents to pay Applicants a fine for contempt amounting to UGX 2,000,000,000/= for contempt of court.*
- 7) *Punitive and exemplary damages for the contempt.*
- 8) *General damages.*
- 9) *Costs of this application be provided for.*

The Application was heard and disposed of inter-party in favor of the Applicant wherein the following orders were issued;

- i. *The decision made by the Ag. Director Human Resource was illegal and Court reviews it for illegality since it was not supposed to have been made and its continued existence would greatly affect the Applicants in their pending Application before the Appointments Board.*
- ii. *An Order of Certiorari quashing the Letter dated 8th February 2018 for illegality.*
- iii. *The rest of the Orders sought will not be made by this court since they could only be made after the Appointments Board has considered the Applicants' pending Application.*
- iv. *The Appointments Board should determine the Applicants' Application pending before them expeditiously within 90 days with an open mind and make an informed decision on the peculiar facts and circumstances of the Applicants' case.*

v. *The Applicants are granted Costs of the Application.*

The respondents contended that the court order was complied with and the Appointments Board commenced the consideration of the applicant's application for the promotion on the 7th May 2019 which was within the set period in 599th Meeting and the same continued with the process at its 601st and 602nd meeting held on 22nd May 2019 and 3rd July 2019 when the same was determined. The decisions were communicated in respective letters dated 4th July 2019.

The applicant sought the following issues to be determined to support a finding for contempt;

ISSUES

1. *Whether the Respondents are in Contempt of a Court Order?*
2. *Whether the Applicants are entitled to any remedies?*

At the hearing of this application the parties were advised to file written submissions which I have had the occasion of reading and consider in the determination of this application.

The applicants were represented by *Dr. James Akampumuza* whereas the respondents were represented by *Mr. Musoke Hudson*.

Submissions

The applicant's counsel submitted that, these express, unqualified and unambiguous Orders were disobeyed by the Respondents. That is contempt of Court. The ingredients of Contempt of Court were authoritatively laid out in the East African Court of Justice in the decision of **Hon. Sitenda Sebalu Vs. Secretary General of the East African Community EACJ Reference No. 8 of 2012.** These are;

1. Existence of a Lawful Order.
2. The Potential Contemnor's knowledge of the Order.

3. The Potential Contemnor's ability to comply and;
4. The Potential Contemnor's failure to comply with/ disobedience of the Order.

It is now trite law that a court order is a court order and must be implemented by those it targets. Where it cannot be implemented for any difficulty, the party so finding it difficult has to appropriately move court by way of appeal but not be held in contempt of court. See the Court of Appeal decisions of Housing Finance Bank Ltd & another vs. Edward Musisi Miscellaneous Application No. 158 of 2010, Amrit Goyal & 3 Others, Court of Appeal Civil Application No. 109 of 2004 and Dr. Julianne Sansa Otim vs. Makerere University Miscellaneous Cause No. 258 of 2016.

The applicants' counsel contended that, the Applicants have led unequivocal Affidavit evidence to show that their applications were considered as ordered and that they have not been considered for promotion and/or promoted despite "the period of within 90 days ordered by Court". This disdainful letting of the timeline that was set by the Court order to expire was done in bad faith, to render nugatory the Court Orders. The 2nd and 3rd Respondents as officials of the 1st Respondent were obligated to give effect to the court order but refused to comply. They are also personally directly liable for contempt. See cases of Geraldine Busuulwa Ssali vs. National Social Security Fund & 2 Others Miscellaneous Application No. 116 of 2016 and Prof. Elisam Magara Vs. Prof. Ddumba Ssentamu & 4 Others MA No. 497 of 2015.

According to applicants counsel, the Respondents clearly contemptuously acted in blatant disregard of this Honorable Court's Order. The Black's Law Dictionary 7th Edition at Page 313 defines Contempt of Court as a disregard of or disobedience to, the rules or Orders of a legislative or Judicial body, or an interruption of its proceedings by disorderly behaviour or insolent language, in its precincts or so near thereto as to disturb the proceedings or to impair respect due to such a body. Contempt of court is such a serious matter that it is the only one exempted from the

constitutional requirements and offences and penalties being defined and prescribed under **Article 28(12)** of the Constitution. In the Court of Appeal case of **Housing Finance Bank (supra) at pgs 11-12**, court held;

The principle of law is that the whole purpose of litigation as a process of judicial administration is lost if orders issued by Court through the set judicial process, in the normal functioning of the Courts, are not complied with in full by those targeted and/or called upon to give due compliance. A party who knows of an order, regardless of whether, in the view of that party, the order is null or valid, regular or irregular, cannot be permitted to disobey it, by reason of what that party regards the order to be. It is not for that party to choose whether or not to comply with such an Order. The Order must be complied with in totality, in all circumstances by the party concerned, it is the responsibility and duty of the party concerned, in case that party for some genuine reason, finds compliance with the Court Order not possible, to appropriately move the Court issuing the order and bring to the attention of that Court the reasons for non-compliance. This is to ensure that the Court issuing the order not only must not be held in contempt, but must not, whatever the circumstances, appear to be held in contempt by any litigant.

The respondent's counsel submitted that the Appointment's Board was made aware of the existence of the court order thorough an advisory addressed to the University Secretary as accounting officer and copied to its Chairman and secretary dated 1st April 2019 and this prompted the sitting of the Appointment's Board.

The process for consideration of the applicants' application commenced on 7th May 2019. By the nature of the composition of the Appointments Board as provided under the Universities and Other Tertiary Institutions Act includes none members of staff and they need more than one meeting to determine the matter.

The respondents' counsel contended that the respondents' did not disregard or ignore the Court order; rather that the respondents duly complied with the court order as the circumstances of the case dictated.

Determination

This court has found part of the submissions of the applicant to involve merits of the decision of the Appointments Board. The court at this stage cannot delve into the decision of the appointments board.

Similarly, some of the orders sought by the applicants are untenable in an application for contempt. The applicants' counsel wants to circumvent the established bodies that are supposed to consider the promotion of the applicants. Most of the orders the applicant sought in this application are untenable and totally misplaced and vexatious.

The only issue for determination is whether the respondents are in contempt of court.

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."

In the Matter of Collins Odumba [2016] eKLR, the Employment & Labour Relations Court of Kenya at Kericho extensively discussed the contempt of court. D. K. N. MARETE held that:

"The law and practice on contempt of court has come out clearly that the essence of contempt proceedings is not to assuage the feelings of the judge or install the dignity of the court. Far from this, it is intended to safeguard the supremacy of the law. In the authority 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.”

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.

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.

In the case of *Kenya Tea Growers Association v Francis Atwoli and 5 ors* [2012] eKLR Lenaola J cited with approval the case of *Clarke and Others v 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, wilful 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.”

This clearly illustrates why courts will not sit and watch in the wake of contempt of court. Disobedience of court orders and or summons would in total disparage the rule of law and lead to anarchy. This would be too much for any of us to await and face. Judges and judicial officers may risk being accused or seen to defend their lofty positions in this exercise, but this would be worth every coin bearing in mind the possible alternatives.

In the instant case the applicant decided to file an application for contempt as per his submissions after 94 days (01-July 2019). This would imply that according to counsel's computation of days, they were late by 4 days.

According to the court Order extracted from the ruling of this court, the said court Order was extracted by the applicants counsel on 3rd April 2019. There is no affidavit of service of the said court order by the applicants' counsel to the respondent. But according to the court order annexed to the application it bears a received stamp of the University Secretary dated 5 April 2019.

According to the different letters dated 4th July 2019 which contained the decision of the appointments board given to the applicants; They state as follows-

"..... In compliance with the Court Order, the Appointments Board Agreed to start the process of considering your application for promotion to the position.....This process was further considered at the 601st meeting of the board held on 22nd May 2019 and 602nd meeting held on 3rd July 2019"

This would imply that the respondent were never in contempt by the time they determined the applicants pending applications before the Appointments Board. The computation of the 90 days had to be calculated from the date of service of the Order of court and not the date of delivery of the ruling.

This Court finds that the respondents are not in contempt of court order compelling the “Appointments Board to determine the applicant’s application pending before them expeditiously within 90 days with an open mind and make an informed decision on the peculiar facts and circumstances of the applicants’ case.”

This application is dismissed with no order as to costs.

I so order.

SSEKAANA MUSA

JUDGE

14th/04/2020