

ANATOS MPOFU
versus
DIRECTOR OF THE SALARY SERVICE BUREAU
and
MINISTER OF HOME AFFAIRS
and
COMMISSIONER GENERAL POLICE

HIGH COURT OF ZIMBABWE
MUNANGATI-MANONGWA J
HARARE, 19 and 25 January 2023

Opposed Matter

Applicant in person
1st respondent in default
2nd respondent in default
Mr *Jaricha*, for the 3rd respondent

MUNANGATI-MANONGWA J: The applicant has approached this court seeking an order declaring all the respondents herein to be in contempt of court for failure to comply with an order given under HH 08/11 in which the applicant was awarded damages in lieu of reinstatement. The applicant seeks that the respondents be imprisoned for 90 days the period of which is to be suspended on condition that the respondents comply with the order within 14 days. The application is opposed by the third respondent only who incidentally is the former employer of the applicant.

The order in issue was granted by the late KARWI J on 29 September 2010. The order reads as follows:

- “1. First respondent be and is hereby ordered to pay the applicant damages in lieu of reinstatement in the sum of US\$58 131 being arrear salaries, bonuses, accommodation, leave days and medical services.
2. First respondent to pay the applicant a lump sum pension of US\$6101.57 and a monthly pension of US\$97.00 until his death.
3. Both respondents to pay costs of suit.”

The relevant background facts are that the applicant was a police officer and was summarily dismissed from the force following conviction in a criminal matter. The applicant successfully appealed against the conviction and later sought reinstatement to the force. He instituted proceedings which resulted in the order above.

It is the applicant's case that he never received the US\$58 131.00 as directed by the court and he rendered proof of having received in his account a lump sum of \$4 534.54 which appears on the applicant's bank statement as net salary deposit and same was paid on the 24 March 2012. The applicant seeks the balance payment of US\$53 596.46 to be paid in his nostro account the details of which he has provided.

The third respondent in opposition states that there was a subsequent compromise and or settlement between the parties where it was agreed that the applicant be reinstated and be considered as retiring at the age of 50 years in 2010. The third respondent avers in his affidavit that the applicant was subsequently paid all his dues. The respondent also asserted that as per the agreement between the parties the applicant was then placed on a pension and as in 2015, he was now earning a pension of US\$255 well above the US\$97 ordered by the court. Mr *Jaricha* argued that given that scenario there is no case of the third respondent being in contempt. I gave Mr *Jaricha* the opportunity to bring to court evidence of payment of the US\$16 064.17 which was purportedly due to the applicant as per the alleged compromise. Mr *Jaricha* brought a bank statement with payments which had been made to the applicant but suffice that the payments did not show a lump sum payment of the US\$16 064.17.

In response the applicant maintained that he never agreed to the proposal and negotiations fell through hence he relies on his court order which has not been honoured to this date.

ROME L.J defines the meaning and import of the concept of civil contempt of court. The learned LORD JUSTICE states in *Hadkinson v Hadkinson* (1952) 2 ALL R 567 (CA) that:

“It is the plain 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 fact is that anyone who disobeys an order of the court is in contempt and may be punished by committal or attachment or otherwise.”

In our jurisdiction the cases of contempt of court have been dealt with in several cases. In the *John Strong (Pvt) Ltd v Wachenuka*, HH 44/10 it was stated that:

“.....civil contempt is the willful and mala fide refusal or failure to comply with an order of court. Before holding the respondent to have been in contempt of court, it is necessary for the court to be satisfied both that the order was not complied with and that the non-compliance was willful on the respondent’s part... once the applicant has established that the respondent has failed to comply with the order, the onus shifts to the respondent to establish that he or she was not willful and *mala fide*.”

In the case of *Stanley Farms Pvt Ltd v Mavington Chidongo & 21 Ors* HH 27-22, MANGOTA J enunciated that:

“All orders of court, whether correctly or incorrectly granted, have to be obeyed until they are properly set aside. The applicant was able to show that it obtained a court order and that the same is extant.”

The above cited cases embody the requirements for one to succeed in the application for contempt of court. They are as follows:

- there must be a court order;
- The offender must have knowledge of the court order;
- The court order must have been served on the person; and
- There must be non-compliance with the court order. The non-compliance must be intentional and there must be clear evidence of deliberate disobedience by the offender.

In regard to the matter at hand, applicant has managed to prove that the court order is extant. The respondent has not appealed against the order and therefore it is still binding. It is common cause that the respondents have the knowledge of the order and there was non-compliance with it. Even though in its opposition, respondent stated that there was a compromise agreement which the parties entered into, it failed to prove to the court the existence of the agreement. There is no concrete evidence of the parties agreeing to abandon the judgment. Whilst correspondence from the third respondent that have been placed before the court purport to state that the applicant was paid his dues the third respondent has failed to substantiate that despite being given an opportunity to do so.

The applicant has been to this court several times ultimately having an order granted in his favour against the respondents for contempt of court which order fell through as the late PHIRI J passed on before rendering his reasons for the judgment. The applicant has had a long and tedious journey in pursuit of justice.

Of note is the fact that whilst the third respondent sought to claim that payment had been done the entity responsible for effecting payments on behalf of the government being the Salaries Services Bureau chose to remain quiet. The third respondent has not complied hence it is in contempt of court. Where a court had pronounced its judgment an arrangement between the parties does not automatically nullify the order. The parties have to make it known to court and in my view the beneficiary of the court order has to unequivocally state that he no longer wishes to stand by the court's pronouncement. This is because an order of court is a sacrosanct pronouncement whose annulment can only be done by the court itself, this not being the case herein and there being no evidence of compliance by any of the parties the application ought to succeed. Suffice that compliance has been outstanding for a very long period and the applicant's complaint that justice delayed is justice denied has basis. I thus endeavored to prepare this judgment within a day as to show that the justice delivery system is still functional and takes the litigants' quest for justice seriously.

Whilst the applicant had sought the imprisonment of respondents, he cited their offices as opposed to individuals. An order for committal is incompetent against an office. Only an individual can be committed to prison. In that regard I find it proper to impose a fine. As the applicant is a self-actor it can be understood that he missed this fact.

In the result,

IT IS ORDERED as follows:

1. The first, second and third respondents be and are hereby declared to be in contempt of court for failure to comply with the court order in HH 08/11.
2. The first, second and third respondents are each sentenced to a fine of \$100 000.00.
3. The first, second and third respondents shall make payment of US\$53 596.46 into the applicant's account at CBZ Norton Branch account number 66961085260019 together with interest at the prescribed rate calculated from 29 September 2010 to date of final payment within 14 days of service of this order.
4. The respondents shall pay costs.

Civil Division of the Attorney-General's office, third respondent's legal practitioners