

TONDERAI TIGERE  
versus  
WARREN PARK 5 COUNCIL PRIMARY SCHOOL DEVELOPMENT COMMITTEE

HIGH COURT OF ZIMBABWE  
**TAKUVA J**  
HARARE; 11 July 2024 & 18 February 2025

*Application for Contempt of Court*

Applicant in person  
*F. Chako*, for the respondent

TAKUVA J:

This is an application by applicant declaring respondent to be in contempt of court of a court order granted by this court under case No. HCH 6402/23.

**BACKGROUND FACTS**

The relationship between applicant and respondent is one of employer/employee. Following labour disputes, applicant approached the labour court under case No. HCH 381/23 seeking *inter alia* an order setting aside the decision of the respondent's disciplinary authority and reinstatement of his employment with full benefits. The matter was removed from the roll to enable applicant to furnish the necessary and relevant documents in terms of R 19(1)(b) and 20(1)(b) of the Labour Court Rules 2017.

Applicant did not receive the requested documents prompting him to file an application under HCH 6402/23 for an order compelling the respondent to furnish the documents within five (5) days from the date of the order. Applicant was then supplied with some of the requested documents. Applicant continued to complain that the supplied minutes were not accurate, the register of the Internal Appeal proceedings of the 25<sup>th</sup> of February 2019 hearing was missing. Also not furnished were copies of employment contracts.

Applicant concluded that by failing to comply with the court order, the respondent is in Contempt of Court. He then filed this application. The Draft Order states;

“It is ordered that:

- a) The application for contempt of court against the respondent be and is hereby granted.
- b) The respondent be and is hereby ordered to purge its contempt within (7) days from the date of this order.
- c) Failure to comply with (b) above the respondent be and is hereby ordered to reinstate applicant to his original position without loss of salary and benefits from dismissal date, or alternatively if reinstatement is untenable with the respondent, respondent be and is hereby ordered to pay applicant damages in lieu of reinstatement backdated to the date of dismissal.
- d) Respondent to pay costs of suit.”

### **The Law**

The requirements which should be satisfied for an application to be granted are settled. In *SIMBA MUKAMBIRWA & ORS v THE GOSPEL OF GOD CHURCH INTERNATIONAL* 193 SC 8/2014, the requirements were laid as follows;

“Before holding a party to be in contempt of a court order, a court must be satisfied that there is a court order which is extant, that the order has been served on the individuals concerned and that the individuals in question know what it requires them to do or not do, that knowing what the order dictates the individuals concerned deliberately and consciously disobeyed the order.

In addition to the above the court must be satisfied that not only was the order not complied with but also that the non-compliance on the part of the defaulting party was willful and malafide.” See also *LINDSAY v LINDSAY* (2) 1995 (1) LR 296 (5).

In the present matter, it is common cause that an order was granted by a competent court and same was served on the respondent. The only issue that calls for determination is whether or not the respondent consciously and deliberately refrained from complying with the court order. Applicant must prove that the disobedience of the court order is willful and malafide. See *PLACIDE MASENGESHO v CHIEF IMMIGRATION OFFICER AND ANOR* HH 70/21 where the court held thus;

“In my view a person will be committed for contempt of court where his disobedience for the court order is willful and malafide.”

In *casu* the respondent was ordered to furnish the applicant with the following;

1. Minutes, Audio recording and attendance register with signatures of participants of 2<sup>nd</sup> February 2019 hearing;
2. Record of Proceedings and Attendance register of internal appeal proceedings of 25 February 2019.
3. Copies of employment contract.

It is common cause that of all the documents mentioned above, it is only the audio recording which has not been furnished to the applicant. The reason why the audio recording has

not been furnished to the applicant is that same is unavailable due to the time frame between the date of the hearing and the date when it was requested. It cannot be said that applicant acted with malafides about the non-compliance with the court order.

I take note that applicant was supplied with some of the documents subject to the court order way before his application compelling respondent for the availing of the documents. The outstanding documents were provided as soon as respondent was served with the application for a compelling order.

Respondent's conduct does not in my view exhibit any form of willful or malafide disobedience of the court order. What has not been provided is non-existent. In the premise, the respondent cannot be held to be in contempt of the court order.

With regards to the two preliminary points raised by the applicant relating to the authority of the deponent to the Opposing Affidavit and Conflict of Interest, I find both to be devoid of merit.

As regard the preliminary point taken by the respondent that the Draft Order is incomplete and incompetent, I find merit in that applicant is praying for an order for his reinstatement to employment in an application for contempt. Perhaps nothing more should be said in light of the position I have taken on the application.

During the hearing, the applicant conceded that the documents he has received so far are sufficient to enable him to proceed with the prosecution of his matter to finality in this court and the Labour Court. Counsel for the respondent, Mr *Chako* committed himself not to oppose an application to expunge the disputed admission from the record and allow applicant to apply for reinstatement without first applying for Condonation. Applicant agreed that the matter be finalised in the Labour Court.

In the circumstances it is ordered that;

1. The application for Contempt of Court be and is hereby dismissed.
2. The parties have agreed to proceed with the hearing in the Labour Court.
3. There shall be no order as to costs.

**TAKUVA J:** .....

*Tapera, Muzana & Partners*, respondent's legal practitioners