

Concept of contempt of court and set conditions for liability.

The concept of contempt of court has many definitions but all refer to willful disobedience of court authority or interference with its power to administer justice or disruption of proceedings likely to jeopardize fair hearing or enforcement of court orders.

In dealing with contempt of court, courts always invoke discretionary power vested to upon them but mainly with the paramount condition that judicial authority and dignity should be protected from being attacked by superfluous criticism or willful disobedience of orders.

Contempt of court has its own history from way back in the 18th century in England where a King was given mandate of protecting his judicial powers when discharging his judicial function.

Initially, the said powers were exercised by him and later on, the same was extended to a panel of judges of the court with purpose of ensuring judicial mandate is not interfered with.

The power to hold a person to contempt of court is not limited to parties who participate in court proceedings but rather extends to those who are not in proceedings but only upon showing that they interfere with court's authority.

Contempt can be attacks to the presiding judge or judicial officer in the course of discharging judicial function or to the court as institution itself.

There are two types of contempt namely civil contempt and criminal contempt. Civil contempt is willful disobedience of court orders while the court is discharging its authority on civil proceedings while criminal contempt is a more complex one because it covers varieties of issues in different forms either by words or written or signs or actions but all aim to scandalise or lower judicial authority and interference or obstruction of administration of justices.

Courts must be extremely careful when exercising discretionary powers in contemptuous proceedings as the same mainly attack two fundamental constitutional principles: rights to person liberty and right to freedom of expression.



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In other jurisdictions such as India, power of the court is regulated by the constitution and prescribed procedure of the act of parliament. Article 129 and 215 of the constitution state that power to deal with contempt proceedings is vested to higher courts and the court is required to exercise its discretion power within guidelines spelt in the act of parliament namely the Contempt of Courts Act of 1971. It provides for the procedures and other issues related to contempt proceedings.

Although there are no specific laws dealing with the issue of contempt of court in Tanzania, there are some provisions of other laws which empower courts of law to deal with contempt proceedings against either party to a case or those who are not involved in the case or proceedings.

These are such as Section 114 and 124 of the Penal Code Act Cap 16 R.E 2019 or Order 37 Rule 2(2) of the Civil Procedures Code Act Cap 33 of 2019. Existence of the above legal provisions is insufficient to cover the subject. Rather, it just points out or gives power to courts to deal with such proceedings but substantively power to deal with such contempt proceedings is entirely left to the discretion of courts.

However, some guiding legal principles were established through case laws which are required to be looked at when a court opts or is moved to invoke its discretionary powers to deal with a contempt proceeding.

One thing which needs to be noted is that the nature of contempt proceedings is criminal regardless of whether it emanated from a civil proceeding or criminal but standard of proof is beyond reasonable doubt as in the case of *Re Bramblevale Ltd* (1969) 3 ALL ER. 1062 and *Knight vs Clifton* (1971)2 ALL ER 378.

The purpose of contempt proceedings is not to punish the person or the respondent by imposing a fine or civil prison but to ensure court orders are complied with.

Therefore, courts have developed four major conditions which are required to be proved before an order of a court can be issued as referenced in the case of *Misc Civil Application No 357 of 2021 between Petroleum Bulk Procumbent Agency & Other vs the Managing Director of City Bank Tanzania Trading DMCC*.

The conditions are (i) existence of valid court order whereby the said order must be in existence and issued in certain date by the court and not mere allegations. The said order can either be an injunction, interim order or any other order issued by a court of law.

Another one is (ii) knowledge of the order by the respondent. The alleged offender must have been aware of the existence of the order issued by the court. Court orders are not statutory laws which require compliance by every person regardless of whether the person has knowledge of the same or not. Rather, it is a specific order which issued to a certain group of people which requires them to comply hence knowledge of the existence of the said order is of paramount importance.

Next is (iii) the ability of the respondent to render compliance. Not every order can be complied with by a respondent because some orders cannot be carried out when issued by court. Courts are required to issue orders in such a way that they can be complied with. For example, a court cannot issue an order to respondent not to eat.

And (iv) willful disobedience of court order. Sometimes a court can issue an order while the respondent may disobey or violate the same unknowingly. Therefore, courts normally look at the intention of respondents before holding them in contempt.

The applicant is duty-bound to prove to the court beyond reasonable doubt in line with the above established principles that a court order was issued and served to the respondent but did not disobey willfully.

It is always initiated formally by way of application either through chamber summons supported by affidavit containing clear facts as to why the order was violated or under very special circumstances and with leave of the court but can be brought by way informal or oral application.

In criminal contempt, disobedience of court authority or disrespect of dignity of the court can either be direct or indirect. Direct means it is done before a judge or magistrate when in the process of dealing with a case or during court proceedings.

A good example is when a witness does not cooperate during hearing or when an advocate or any other person uses abusive language to undermine the authority of the court in administering justice.

Indirect contempt happens outside without the presence of a judge or of magistrate. In a bid to continue protecting the authority of the court, citizens are required not to make comments outside the court or make utterances which have the effect of

undermining the authority of the court in administering justice.

A good example here is when analysts comment on validity of a court order or its competence through media. To do it without undermining the authority or amounting to personal attack of a particular judicial officer, it should be done in smart way.

Note: The material and information contained in this article are for general information purposes only. They only provide either elementary or basic legal knowledge on the above subject. Anyone considering legal action should consult an experienced lawyer to understand current laws and how they may affect a case in question.