



SBI International AG Kenya v Commissioner for Domestic Taxes (Rispa Simiyu) & 2 others (Miscellaneous Civil Application E113 of 2022) [2023] KEHC 25850 (KLR) (Commercial and Tax) (27 November 2023) (Ruling)

Neutral citation: [2023] KEHC 25850 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E113 OF 2022
AA VISRAM, J
NOVEMBER 27, 2023**

BETWEEN

SBI INTERNATIONAL AG KENYA APPLICANT

AND

**COMMISSIONER FOR DOMESTIC TAXES (RISPA SIMIYU) 1ST
CONTEMNOR**

**DIRECTOR GENERAL-KENYA NATIONAL HIGHWAY AUTHORITY, ENG.
KUNG'U NDUNG'U 2ND CONTEMNOR**

CHANJE KERA 3RD CONTEMNOR

RULING

1. On 27th January, 2022, the Tax Appeals Tribunal (Tribunal), in Tax Appeals Tribunal Misc. Application No. 23 of 2022, SBI International AG Kenya v Commissioner of Domestic Taxes, issued an interim order of stay of enforcement of the Agency Notice dated 23rd December, 2021, for payment of Kshs. 400,000,000.00/- to the Kenya Revenue Authority (KRA), issued to Kenya National Highways Authority (KENHA) pending inter partes hearing of the Applicant's application dated 25th January, 2022.
2. Through a Contempt of Court Application Notice, brought under Section 5 of the *Judicature Act*, Section 3A of the *Civil Procedure Act*, Article 169(1)(d) of *the Constitution* of Kenya, Section 24(3) of the *Tax Appeals Tribunal Act* and Rule 39 of the High Court (Organization and Administration) (General) Rules, 2016, the Applicant seeks the following orders:-
 1. Spent;



2. That Summons be issued for personal attendances of Ms. Rispa Simiyu the sitting Commissioner of Domestic Taxes, Eng. Ndungu Kung'u the incumbent Director General, Kenya National Highways Authority and signatory to the Kenya National Highways Authority Bank Accounts, Mr. Chanje Kera a co-signatory to the Kenya National Highways Authority Bank, before the Honourable Court for hearing of the present application for Contempt against their egregious conduct of willful disobedience of orders of the Tax Appeal Tribunal in Tax Appeals Tribunal Misc. Application No. 23 of 2022; SBI Holdings International A vs. Commissioner of Domestic Taxes issued on 27th January 2022;
 3. That Ms. Rispa Simiyu, the sitting Commissioner of Domestic Taxes, Eng. Ndungu Kung'u incumbent Director General, Kenya National Highways Authority and signatory to the Kenya National Highways Authority Bank Accounts, Mr. Chanje Kera a co-signatory to the Kenya National Highways Authority Bank, respectively the cited Contemnors herein do stand committed to jail for a period as this Honourable Court shall determine for contempt of Court in that being aware of the Orders of Tax Appeal Tribunal in Tax Appeals Tribunal Misc. Application No. 23 of 2022; SBI Holdings International A vs. Commissioner of Domestic Taxes issued on 27th January 2022, knowingly and willfully violated, disobeyed and undermined the effect and purpose of the said order and or knowingly and willfully failed to take reasonable steps to ensure that the said orders were obeyed;
 4. That the costs of and occasioned by this application be paid by the cited Contemnors on indemnity basis.
3. The application is based on the grounds on its face and the supporting and further affidavits sworn by the Applicant's Managing Director, Gilad Mishni, on 11th February, 2022 and 21st June, 2022, respectively. In summary, the Applicant's case is that the 1st, 2nd and 3rd Contemnors, Ms. Rispa Simiyu, the Commissioner of Domestic Taxes, Eng. Ndungu Kung'u, the Director General, Kenya National Highways Authority (KENHA), and a signatory to the KENHA Bank Accounts, Mr. Chanje Kera, co-signatory to the KENHA Bank Accounts, were aware of, and are in contempt of the Tribunal's order.
 4. The Applicant deposed that the Commissioner was represented by counsel in the proceedings before the Tribunal, leading to the issuance of the order. Upon delivery, but before extraction and service of the order, the Applicant's appointed tax agent, Messrs Price Water House Coopers issued notice of the Tribunal's decision to the 2nd and 3rd alleged Contemnors through email at 11.03 AM on 27th January, 2022. Ms. Mathenge M. Muhoya of KENHA copied the email to Eng. Njuguna Gatitu, Director Policy, Strategy and Compliance, Kenya National Highways Authority and Eng. Charles Okeyo Dede. In spite of the notice, the Commissioner demanded compliance of the stayed agency notice, and the 2nd and 3rd alleged Contemnors proceeded to approve, and make payment to the Commissioner. The Applicant received a payment notification time stamped at 3.18 PM on 27th January, 2022, from the Kenya Revenue Authority, initiated by the Kenya National Highways Authority.

Responses

5. In response, the Commissioner filed a replying affidavit sworn on 18th October, 2023, by Esther Wahome. She deposed that the Commissioner undertook an audit of the Applicant's affairs and raised a tax assessment in the sum of Kshs.3,686,434,989.49/- being under-declaration of income tax and VAT for the period 2016 to 2020, inclusive of penalties and interest. In the midst of exchange of correspondence, but before the Applicant had furnished the requisite documents, the Commissioner discovered that the Applicant had won a case against KENHA and had directed KENHA to pay the



- decretal amount into a foreign account. The Commissioner was apprehensive that it may not be able to realize any taxes due and payable, if the money was moved out of the jurisdiction.
6. Therefore, pursuant to Section 42 of the *Tax Procedures Act*, it issued an agency notice dated 23rd December, 2021 to KENHA to secure payment of the said assessed taxes. The above sequence of events triggered the Applicant's application dated 25th January, 2022 for stay of enforcement of the said agency notice before the Tribunal.
 7. The Commissioner contended that Applicant has not demonstrated having served it with the impugned order; that the payment by KENHA was made on 27th January, 2022, before the order was issued by the Tribunal; that there is no evidence that the Commissioner called for the payment of Kshs. 400,000,000/- from KENHA after the order was issued on 28th January, 2022; that the contempt of Court proceedings is an abuse of the court process; and this Honourable Court should not entertain such proceedings, especially since the Commissioner filed for preservation orders to secure the taxes subsequent to the ruling of the Tribunal in High Court Misc. Application No. E457 of 2022, Commissioner of Domestic Taxes v SBI International AG Kenya.
 8. The 2nd and 3rd alleged Contemnors filed and served replying affidavits sworn on 31st March, 2022 respectively, and an affidavit sworn by Boniface Kiplagat (Mr. Kiplagat) on the same date. According to the 2nd and 3rd alleged Contemnors, they were not parties to the proceedings before the Tribunal, and they were not served with a copy of the order of the Tribunal dated 28th January, 2022. Further, that the process of payment of the Applicant's claim for Kshs.1.28 billion began on 17th December, 2021. KENHA had instructed its bank to pay Kshs. 400,000,000/- into the Applicant's London based bank account, however, the payment did not go through due to shortage of US Dollars.
 9. On 23rd December, 2021, KENHA received an agency notice from the Commissioner appointing it to collect and remit Kshs. 3,686,434,991/- from any monies due to the Applicant. On 24th December, 2021, the Applicant provided the details of its Kenya Shillings denominated bank account. By 17th January, 2022, KENHA had internally approved the payment of Kshs. 400,000,000/- to KRA. On 24th January, 2022, the Commissioner issued KENHA with a demand for compliance with the agency notice and threatened to undertake recovery measures.
 10. On 27th January, 2022, the 3rd alleged Contemnor signed the payment cheque, which was already signed by Eng. Njuguna Gatitu, the Director Policy, Strategy and Compliance at KENHA at 8.30AM. Mr. Kiplagat, the assistant accountant, delivered the cheque together with the instruction letter, and the payment took effect on 27th January, 2022 at 10.02 AM, after which KENHA no longer had control of the funds. He was out of the office for the rest of the day and did not return.
 11. The 2nd alleged Contemnor deposed that he was merely enjoined in the contempt proceedings for holding the office of Director General of KENHA. He denied approving and making the payment to the Commissioner. Although he admitted that he had seen the email sent at 11.03 AM from the Applicant's tax agent of 27th January, 2022, he denied knowledge of the order, claiming that he was out of the office for a board retreat on that day. He also claimed that he was merely copied into the email correspondence, but there was no clear indication of what he was directly required to do, or not do.

Applicant's Submissions

12. The application was canvassed through written submissions. The Applicant filed written submissions dated 21st June, 2022. The Applicant relied on the decision of the High Court in *North Tetu Farmers Co. Ltd v Joseph Nderitu Wanjohi (Civil Case No 13 of 2014) [2016] eKLR* in support of its argument that it has established the four elements required to make a case for contempt.



13. According to the Applicant, the Commissioner was a named party in the proceedings before the Tribunal, and it was represented by appointed counsel. Therefore, it had both knowledge and notice of the order. The Applicant relied on the decision of the Court of Appeal in *Shimmers Plaza Limited v National Bank of Kenya Limited (Civil Appeal No. 33 of 2012) [2015] eKLR* for the proposition that knowledge of the judgment or order by the advocate of the alleged Contemnor is sufficient for the purpose of contempt proceedings.
14. It submitted that although the 2nd and 3rd alleged Contemnors were not parties to the proceedings, they had knowledge of the order pursuant to communication made to its officers, including the ones who effected payment. In support of the above, the Applicant relied on the decisions in *Justus Kariuki Mate & another v Martin Nyaga Wambora & Another (CA 24 of 2014) Nyeri*, *Shimmers Plaza Limited v National Bank of Kenya Limited [Supra] eKLR* and *Basil Criticos v Attorney General & 8 Others [2012] eKLR*, to the effect that where a party clearly acts and shows that he had knowledge of a court order, the strict requirement that personal service must be proved is rendered unnecessary.
15. The Applicant further submitted that by failing to call off the demand, and failure to stop the payment, the Commissioner and the alleged 2nd and 3rd Contemnors breached the order of the Tribunal. Their actions were deliberate and in bad faith.
16. The Applicant submitted that there was no evidence to support the claim that the payment was effected at 10.02 a.m., before the issuance of the order; and that the KRA payment slip showed that the payment was actually made well after the issuance and notification of the order, at 3.18 p.m. on 27th January, 2022.

The 1st alleged Contemnor's Submissions

17. The Commissioner submitted that she was not personally served with the order, and further, that the said order does not contain a penal notice. She relied on the High Court's decision in *Jackson Omwenga T/A Jackson Omwenga & Co. Advocates v Harambee Sacco Society Ltd & another (ELC Civil Suit No. 38 of 2014) [2014] eKLR* and Rules 81.6, 81.8 and of the English Civil Procedure Rules for the proposition that service should be personal unless the court dispenses with the same; and that a penal order may not be enforced unless there is a prominently displayed warning of the punishment for disobedience of the order.
18. The Commissioner asserted that the Applicant has not proved knowledge of the terms of the order; or that she acted deliberately; and in bad faith. The Commissioner relied on *Emma Wanjiku Ndungu v Francis Kamau Njoroge & 4 other (Succession Cause 799 of 2009) [2012] eKLR*, where the Court emphasized the need for strict adherence to the requirements before the Court grants a committal order for contempt. She further relied on the decision of the court in *Molly Wambui Kiragu (Suing as Administrator of the Estate of the late Samuel Kiragu Michuki) v Governor City County & Another (Miscellaneous Application No. 20 of 2015) [2018] eKLR*, which underscored the need to establish mala fide because deliberate disregard is not enough to cite one for contempt.
19. The Commissioner further relied on *Mwangi H.C. Wangondu v Nairobi City Commission, Nairobi Civil Appeal No. 95 of 1998* for the proposition that the Applicant has not met the threshold of proof required in contempt of court proceedings.



The 2nd and 3rd alleged Contemnors' Submissions

20. By way of their written submissions dated 17th October, 2023, the 2nd and 3rd alleged Contemnors contended that the Applicant has not proved its case. In particular, they submitted that wilful disregard of the court order has not been established.
21. They contended that from 23rd December, 2021 to 27th January, 2022, the Applicant did not raise any concerns regarding the agency notice; that by effecting the payment to KRA without knowledge of the order, the said alleged Contemnors acted diligently with the intuition to comply with the law; and that no person should be deprived of liberty, albeit only to constrain compliance with a court order.
22. The 2nd and 3rd alleged Contemnors relied on the decision in Samuel M. N. Mweru & Others v National Land Commission & 2 others (Miscellaneous Civil Application No. 443 of 2017) [2020] eKLR, in support of the argument that deliberate disregard without bad faith does not meet the threshold to prove contempt of court. They further relied on the decision in Shiela Cassatt Issenberg & Another v Antony Machatha Kinyanjui (Civil Suit No. 19 of 2020) [2021] eKLR to the effect that the standard of proof in contempt proceedings is higher than on a balance of probability, which had not been met.

Analysis and Determination

23. I have considered the Application, the grounds in support, the rival affidavits, the submissions of the parties and the relevant authorities. The issue for determination is whether the Applicant has made out a case for civil contempt.
24. On 9th November, 2018, in the High Court decision in Kenya Human Rights Commission v Attorney General & Another (Constitutional Petition No. 87 of 2017) [2018] eKLR, my brother, Mwita J. declared that the Contempt of Court Act No. 46 of 2016 was inconsistent with the Constitution for lack of public participation and for violating the independence of the Judiciary. See also Republic v University of Nairobi & 2 others Ex Parte Mwangi Emma Wahito & another (Judicial Review Misc. Application No. 9 of 2019) [2019] eKLR. Accordingly, the applicable law in relation to contempt proceedings reverted to Section 5 of the Judicature Act, which provides as follows: -
 - “(1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.”
25. Pursuant to Section 3 of the Judicature Act, the law that governs contempt of court proceedings is the law of England that was applicable at the time the alleged contempt was committed. In the present matter, the applicable law is set out at Rule 81 of the English Civil Procedure Rules (as amended from time to time).
26. Further to the above, in substance, the four elements that must be established to make a case for contempt were set out in the oft-cited excerpt from Contempt in Modern New Zealand, referred to by the Commissioner, as follows:-
 - “There are essentially four elements that must be proved to make the case for civil contempt. The Applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-



- a. The terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- b. The defendant had knowledge of or proper notice of the terms of the order;
- c. The defendant has acted in breach of the terms of the order; and
- d. The defendant's conduct was deliberate.”

27. In respect of the above test, the Applicant argued that the facts of the present matter called for an exemption of the requirement of penal notice and personal service upon the alleged Contemnor in respect of a finding of contempt. Its argument was premised on the notion that knowledge of the order; and its deliberate breach, was sufficient.

28. On the other hand, the Commissioner and the 2nd and 3rd alleged Contemnors argued that the application for contempt is defective for lack of endorsement with a penal notice and personal service upon the alleged Contemnors. They relied on Rule 81.4 of the English Civil Procedure Rules (Amendment No. 3) Rules, 2020 which provides as follows:-

Requirements of a contempt application

81.

4.

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- (1) Unless and to the extent that the court directs otherwise, every contempt application must be supported by written evidence given by affidavit or affirmation.
- (2) A contempt application must include statements of all the following, unless (in the case of (b) to (g)) wholly inapplicable—
 - (a) the nature of the alleged contempt (for example, breach of an order or undertaking or contempt in the face of the court);
 - (b) the date and terms of any order allegedly breached or disobeyed;
 - (c) Confirmation that any such order was personally served, and the date it was served, unless the court or the parties dispensed with personal service;
 - (d) if the court dispensed with personal service, the terms and date of the court's order dispensing with personal service;
 - (e) confirmation that any order allegedly breached or disobeyed included a penal notice;..”

29. I have considered the above argument, and wish to state for the record, that I am aware of a school of thought in our own jurisdiction that is moving away from the requirement of personal service and endorsement of penal notice in certain circumstances. However, the general position as stated by the Court of Appeal, is that endorsement of a penal notice is a mandatory requirement to make out a case



for contempt. In *Ochino & another v Okombo & 4 others* (Civil Appeal No 36 of 1989) [1989] eKLR, the Court of Appeal stated as follows:-

“The power to deal with contempt of court is provided for under section 5 of the *Judicature Act* (cap 8) and order 39 rule 2(3) of the Civil Procedure Rules. We have to follow the procedure and practice in England. As we read the law, the effect of the English provisions is that as a general rule, no order of court requiring a person to do or abstain from doing any act may be enforced (by committing him for contempt) unless a copy of the order has been served personally on the person required to do or abstain from doing the act in question. The copy of the order served must be indorsed with a notice informing the person on whom the copy is served that if he disobeys the order, he is liable to the process of execution to compel him to obey it. As this court pointed out recently in the case of *Mwangi Mangondu v Nairobi City Commission* (Civil Appeal No 95 of 1988):

“This requirement is important because the court will only punish as a contempt a breach of injunction if satisfied that the terms of the injunction are clear and unambiguous, that the defendant has proper notice of the terms and that breach of the injunction has been proved beyond reasonable doubt.” (emphasis mine)

30. Similarly, in *Nyamodi Ochieng Nyamogo & another v Kenya Posts & Telecommunications Corporation* (Civil Application No. Nai 264 of 1993 (Nai 114/93 Ur) [1994] eKLR, the Court of Appeal observed that:-

“It is clear that the law in England does not render a mere knowledge of all the terms and directions of the court order and a disobedience thereof by an alleged Contemnor as being enough to commit him for contempt. A further essential step is needed to be taken in the shape of indorsement of the penal consequence on the order served on the alleged Contemnor. That is what this Court held in its decision in *Wangondu’s* case and that is what we now hold.” (Emphasis added)

31. More recently, Court of Appeal in *Shimmers Plaza v National Bank of Kenya Limited* (Civil Appeal No. 33 of 2012) [2015] eKLR, (cited by the Applicant) recognized that there may be certain exceptional circumstances in which the requirement for personal service and penal notice may be waived. However, in setting aside the same, knowledge of an order must be established beyond reasonable doubt. The Court aptly stated as follows:-

“It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or notice of the existence of the order of the Court forbidding it. The threshold is quite high as it involves possible deprivation of a person’s liberty. This standard has not changed since the old celebrated case of *Ex parte Langley* 1879, 13 Ch D. 110 (C.A), where Thesiger L.J stated as follows. at p. 119:

“the question in each case, and depending upon the particular circumstance of the case, must be, was there or was there not such a notice given to the person who is charged with contempt of Court that you can infer from the facts that he had notice in fact of the order which has been made? And, in a matter of this kind, bearing in mind that the liberty of the subject is to be affected, I think that



those who assert that there was such a notice ought to prove it beyond reasonable doubt.” (emphasis mine)

32. To my mind, based on the above authorities, I am of the view that the general position is that personal service and endorsement of penal notice are mandatory in all, but the most exceptional of circumstances. Moreover, that the same may only be waived if knowledge of the court order (being disobeyed) has been proved by the Applicant beyond reasonable doubt.
33. The jurisprudence on which the general position is based, to my mind, reflects the deeply entrenched constitutional principle that a person ought not to be deprived of his liberty, except and in only the clearest of cases. And further, that every person ought to enjoy his or her rights and fundamental freedoms as set out in the Bill of Rights to the greatest extent consistent with the right. In applying the same, or curtailing such a right, this court is mandated to have regard to the values that underlie an open and democratic society, which include human dignity and freedom, as well as the provisions of Article 24 of *the Constitution*.
34. On the flip side of the coin, this court is empowered to punish for contempt for an equally important constitutional reason, namely; to enable it enforce its orders; and to maintain the integrity of the justice system at large. Without such a power, court orders would be rendered merely suggestive. Needless to say, the court must therefore exercise its powers when called upon to do so, but always in accordance with, and within, the bounds of *the Constitution*, and bearing in mind the rights of the affected individuals.
35. I am guided by Article 20 of *the Constitution* which states that the Bill of Rights applies to all law and binds all persons. Further, the people of Kenya adopted a Constitution that emphatically provides for the protection of individual rights and freedoms, including the right to liberty and security of the person, as set out in Article 29 of *the Constitution*. Reading the above, I am of the view that any form of punishment, including civil commitment, must be proportionate, and ought not violate the constitutional rights of the individual.
36. Finally, any limitation of fundamental rights and freedoms may only be done strictly, in accordance with Article 24 of *the Constitution*. Accordingly, in reaching a decision whether to hold a person in contempt and deprive that individual or those individuals of liberty, this court is bound to balance the interests of the Applicant (and consider the loss occasioned by the breach of the order); the rights of the alleged Contemnors; and consider the interests of the Judiciary in maintaining the integrity of the justice system and ensuring compliance with its orders.
37. In carrying out the above balance, I am further guided by the decision of the court of England in *Re Bramblevale* (1970) 1 Ch. 128, where Lord Denning stated as follows concerning contempt of Court:-

“Contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond all reasonable doubt.”
38. Further, the decision of the Court of Appeal in Civil Appeal No. 95 of 1998 *Mwangi H.C. Wangondu vs Nairobi City Commission*, where the court stated that the threshold of proof required in contempt of Court is higher than applicable in normal civil cases, and one can only be committed to civil jail, or otherwise penalized based on evidence that leaves no doubt as to the Contemnor’s culpability.



39. Additionally, in *Republic v Principal Secretary, Ministry of Defence Ex Parte George Kariuki Waithaka* [2019] eKLR quoting the decision in *Heatons Transport (St Helens) Ltd v Transport and General Workers Union (1973) AC 15* the court stated:-
- “that it is now established that the mental element for liability for contempt arising out of disobedience is simply that the disobeying party either intended to disobey, or made no reasonable attempt to comply with the order”. (emphasis mine).
40. Applying the above law to the facts, the evidence shows that while the Commissioner was represented by an advocate at the Tribunal, she was not personally present when the order was made. Further, she was not personally served with the order; and no penal notice was endorsed on the said order.
41. As regards, the 2nd and 3rd alleged Contemnors, the evidence shows that they were not part of the proceedings before the Tribunal. Similarly, they were not personally served with the order; and no penal notice was endorsed on the order.
42. In the absence of the above, I ask myself, has the Applicant made out a case to dispense with penal notice and personal service? Based on the authorities above, the same may be waived only if the Applicant can show that the alleged Contemnors knew “beyond a shadow of a doubt” or “beyond reasonable doubt” of the contents of order; and that they still ‘intentionally’, ‘willfully’, and ‘deliberately’ disobeyed the same. Further, the burden of proof lies upon the Applicant.
43. The answer to the above, is no. I do not think that the Applicant has discharged the evidential and legal burden to the appropriate degree of probability. Looking at the evidence before me, there are several different versions of events. The Applicant’s version of events, in short, is that the alleged Contemnors knew of the contents of the order based on the email from PWC on 27th January, 2022 at 11:03 a.m. but still went ahead, at 3:18 p.m. to make payment in disobedience of the order. In support of the above argument, it relied on the time stamp on the KRA payment slip, marked as 3:18 p.m. The alleged Contemnors’ version on the other hand, is that payment was made at 10:02 a.m., before the said email from PWC was received.
44. The time at which payment was made is relevant because the question is whether or not the alleged Contemnors knew of the order at the time the payment was made. It must be shown beyond reasonable doubt that they were aware of the order before the payment was made, and not after. The competing versions of events boils down to a matter of five hours, and the liberty of the alleged Contemnors hang in the balance.
45. Considering the above, I am more inclined to exercise caution, and in doing so, I am persuaded that that the time stamp on the KRA payment slip is more likely to reflect the time that payment was received by KRA, rather than the time that payment was made to it.
46. Having found the above, the Applicant has failed to demonstrate that the alleged Contemnors knew, beyond reasonable doubt, of the terms of the order, at the time of making payment, and deliberately breached the same. Accordingly, I decline to dispense with the requirement for personal service and endorsement of a penal notice.
47. Having held the above, given that personal service was never effected on the alleged Contemnors, and the order was not endorsed with a penal notice, I find that mandatory requirements as stated above were not complied with. I am further satisfied that facts of the present matter do not meet the constitutional muster as is required by Article 24 when limiting a fundamental right or freedom.



48. Based on the reasons as set out above, I find that the Notice of Motion dated 11th February, 2022, is without merit and the same is hereby dismissed with costs.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 27TH DAY OF NOVEMBER 2023

ALEEM VISRAM

JUDGE

In the presence of;

.....For the Applicant

.....For the 1st Contemnor

.....For the 2nd Contemnor

..... For the 3rd Contemnor

