



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE
WINDING UP CAUSE NO 1 OF 2011

AFRICA TURKANA LTD.....1ST PETITIONER

AFRICA OIL CORPORATION.....2ND PETITIONER

AFRICA OIL KENYA BV.....3RD PETITIONER

AND

0903658 BC LTD.....SUPPORTING CREDITOR/RESPONDENT

VERSUS

INTERSTATE PETROLEUM CO LTD.....RESPONDENT

MAOSA KENGARA MONENA.....1ST OBJECTOR/CONTRIBUTOR

ERICK PATRICK ADERO OBAT.....2ND OBJECTOR/CONTRIBUTOR

MOSES ONYANGO OMBOYO.....3RD OBJECTOR/CONTRIBUTOR

LUCY GATHIMO.....4TH OBJECTOR/CONTRIBUTOR

EDWARD KINGS ONYANCHA MAINA.....5TH OBJECTOR/CONTRIBUTOR/APPLICANT

RULING

In his notice of motion dated 24th December 2020 the brought under certificate of urgency sought orders of sequestration and warrants of arrest against M/s 0903658 B.C. Ltd, the supporting creditor, who failed to oppose the Notice To Show Cause why execution should not issue as ordered by the court on 26.09.2019; which was served upon the supporting creditor on 05.11. 2020.

The petitioners opposed the application on the grounds that this court lacks jurisdiction; since this court is *functus officio* and the matter is *res judicata*. The respondent filed grounds of opposition and raised a preliminary objection based on points of law.

During the pendency of the delivery of the ruling, it came to my attention that this court (Chemetei, J) had on 28th May 2019 issued an order requiring the applicant to seek leave of this court before filing any application.

It is clear that the applicant did not first seek and obtain leave of this court before filing the instant application.

It is important to point out that the obtainment of the said leave ensures the economic usage of the scarce court resources namely personnel, time and money. Additionally, it protects litigants against vexatious litigation with its attendant monetary expenses.

The fact that Chemetei, J was transferred from Kitale to Nakuru did not affect the continued validity of the order that he issued; since an order once issued by a court of law acquires a life of its own and remains in force throughout the life of the suit. Furthermore, it binds the parties to the suit throughout its life time.

In the premises, I find that this application is incompetent and is hereby struck out with costs to the petitioners/respondents.

Ruling signed, dated and delivered at Kapenguria via e-mail address of the contributor/applicant and via Post Office Box of the Petitioner/respondent this 30th day of March2021

J. M. BWONWONG'A

JUDGE

In the Presence of

Mr. Okodoi -Court Administrator