REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILINMANI LAW COURTS

JUDICIAL REVIEW DIVISION

MISCELLANEOUS APPLICATION NO. 573 OF 2017

IN THE MATTER OF THE AN APPLICATION FOR AN ORDER OF *CERTIORARI*

AND

IN THE MATTER OF THE DECISION OF THE RESPONDENT TO DISCONTINUE THE APPLICANT FROM

STUDYING AT THE UNIVERSITY CONTAINED IN THE RESPONDENT'S LETTER DATED 11TH APRIL 2017

AND

IN THE MATTER OF ARTICLE 47 OF THE CONSTITUTION

AND

IN THE MATTER OF SECTIONS 4, 6, 7, 8 AND 9 OF THE FAIR ADMINISTRATIVE ACTION ACT 2015

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

KENYATTA UNIVERSITY.....RESPONDENT

AND

LOSEM NAOMI CHEPKEMOI.....*EX PARTE* APPLICANT

RULING

Introduction

1. The relevant background to this determination as far as I can discern it from the grounds in support of the application and the annexed supporting Affidavit of **Losem Naomi Chepkemoi,** the *ex parte* applicant *is that vide a judgment delivered on **24th** January 2018, this court ordered the Respondent to accept her appeal against a decision rendered by the Students Disciplinary Tribunal discontinuing her from studies and determine the appeal* within a period of thirty days, in default, the decision shall, unless otherwise ordered, stand quashed.

2. She also states that on **16th** April 2018, she filed an application seeking to enforce the said judgment, but, on **19th** June 2018, a consent order was recorded to the effect that the Respondent do hear her appeal within **30** days. Her complaint is that notwithstanding the said order, the Respondent failed to hear the appeal despite her written requests. Additionally, she states the Respondent was ordered to pay costs of **Ksh. 30,000/=** being the agreed costs within **14** days.

The Application.

3. In the instant application, the *ex parte* applicant prays for orders that this court declares and finds that being aware of the said orders, the Respondent and its Vice Chairman Prof. Paul Wainanina, have disobeyed the same, hence, they are in contempt of court. Additionally, she prays that this court sanctions Prof. Paul Wainanina as it deems fit and appropriate including jailing him for six months. She also prays for orders that this court orders that the Respondent to forthwith admit her as ordered by the court.

4. The core ground relied upon is that the Respondent has failed to accept and determine the appeal within **30** days, hence, it has willfully disobeyed the orders of this court.

Respondent's Response.

5. The application is opposed. **Mr. Aaron Tanui**, the Respondents Legal Officer in his Replying Affidavit dated **2nd** October 2018 averred that the *ex parte* applicant was discontinued by the Student's Disciplinary Committee after she was found guilty of influencing/tampering with her online examination data in five units. He averred that she was invited to appear before the Students Disciplinary Appeals Committee vide a letter dated **14th** September 2018. Further, he averred that she appeared before the Students Disciplinary Appeals Committee on **27th** September 2018 at the Deputy Vice-Chancellor (Academic's) Boardroom No. **122,** but, upon appearing before the Committee, she was contemptuous and hostile towards the Committee and stated that she was waiting hearing before the High Court. **Mr. Tanui** also stated that the *ex parte* applicant was disrespectful to the Committee, and, that, she kept quiet and walked out. He deposed that the Committee upheld the decision appealed against and annexed copies of the relevant minutes of the Appeals Committee.

***Ex parte* applicant's supplementary Affidavit.**

6. In reply to the above Replying Affidavit, the *ex parte* applicant filed a supplementary Affidavit sworn on **19th** November 2018 in which she averred that she received a letter dated **14th** September 2018 from the *ex parte* applicant inviting her to the hearing of her appeal on **27th** September 2018. She averred that she sought advice from her advocate who informed her that he would be travelling out of the country. She further averred that her advocate advised her to attend the hearing and inform the Respondent that she had filed an application in court challenging the hearing of the appeal which application was scheduled for hearing on **3rd** October 2018, and, that, the application had been served upon the Respondents long before the letter inviting her for the hearing.

7. She further averred that on **27th** September 2018, she attended the hearing of the appeal and politely told the Appeal Committee that her application was coming up for hearing on **3rd** October 2018 and that she had been asked by her advocate to request the Committee to wait until her application is heard and determined. Further, she states that she informed the Committee that in the event of the Respondent proceeding with the appeal, her pending application would be compromised.

8. Lastly, she deposed that the Chairman of the Committee cut her short even before completing her submissions, and, that, he was rude and sent her away. In response to the accusation that she was rude, she averred that it was the Respondents representative who were rude, intimidating and contemptuous to her, hence, in her view, her appeal was not considered. Additionally, she states that the proceedings of **27th** September 2018 are *sub judice* and in contempt of court and urged the court to declare them invalid.

***Ex parte* Applicant's counsel's submissions.**

9. The substance of **Mr. Gacheru**, counsel for the *ex parte* applicant's submission is that the *ex parte* applicant has proved that the Respondent was aware of the existence of the court orders,[1]and, that, the Respondent is in contempt. Additionally, it was his submission that the Respondent did not consider the appeal filed on **9th** February 2018 since its letter inviting her to attend the hearing of the appeal referred to an appeal letter of **15th** September 2017.

10. It was his submission that the court order decreed that the Respondent hears the appeal within **30** days of its lodging, hence, purporting to hear the appeal on **27th** September 2018 was clearly in contempt of the said order, and therefore the proceedings are a nullity. To buttress his argument he relied on *Clerk & Others v Chadburn & Others*[2] whereby it was held that *"any act done in willful disobedience of an injunction or court order was not only a contempt of court but also an illegal and invalid act which could not therefore effect any change in the rights and liabilities of others."* He also relied on *Judicial Service Commission v the Speaker of the National Assembly & 5 Others*[3] in which the above passage was applied and adopted and reiterated that purporting to hear the appeal during the pendency of this application offended the rule of *sub judice.*

11. He further submitted that this court has the power to grant the orders sought[4] and urged the court to commit the Respondents Vice Chairman Paul Wainaina to jail for **6** months and fine him "a reasonable sum of **Ksh. 1,000,000/=."**He also urged the court to order that the Respondent admits the *ex parte* applicant. He contended that the issue before the court is a contest between the Rule of Law and Impunity, and, that, the Respondent never applied for extension of time.

Respondent' counsel's submissions.

12. Mr. Kibe Mungai, the Respondent's counsel submission was that the *ex parte* applicant was invited for a hearing. He argued that the University Council was at the material time undergoing a transition, hence, it had difficulties in constituting the various tribunals including the Students Disciplinary Appeals Committee, hence, the allegation that it deliberately refused to hear the appeal is untrue. He also contended that the appeal was ultimately heard on **27th** September 2018 and that the *ex parte* applicant was present. He summarized the findings of the Appeal's Committee as follows, that, the applicant did not want to proceed with the appeal as she had already filed the present application, that she was hostile towards the committee and that she walked out of the hearing, consequently, the tribunal had no reason to vacate the decision rendered by the Students Disciplinary Tribunal. He contended that the Respondent purged the contempt by hearing the appeal, though not within the timelines and urged the court to exercise its discretion judiciously.[5]

Determination.

13. It is an established position that if courts are to perform their duties and functions effectively and remain true to the spirit which they are sacredly entrusted with, the dignity and authority of the courts has to be respected and protected at all costs. Otherwise the very cornerstone of our constitutional scheme will give way and with it will disappear the Rule of Law and a civilized life in the society. It is for this purpose that courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside courts which tend to undermine their authority and bring them in disrepute and disrespect by scandalizing them and obstructing them from discharging their duties. When the court exercises this power, it does so to uphold the majesty of the law and of the administration of justice. The foundation of judiciary is the trust and confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is

shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working the edifice of the judicial system gets eroded.

14. It is essential for the maintenance of the Rule of Law and order that the authority and the dignity of courts is upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. 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 uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void.[6]

15. It must be remembered that court orders must be obeyed at all times in order to maintain the Rule of Law and good order. This of course means that the authority and dignity of our courts must be upheld at all times and this differentiates civilized societies from those applying the law of the jungle. It is the duty of the court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with contemnors.[7] The court does not, and ought not be seen to make orders in vain; otherwise the court would be exposed to ridicule, and no agency of the constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.[8]

16. It is uncontested that a court order is binding on the party against whom it is addressed and until set aside remains valid and is to be complied with. I can comfortably sat that I shudder to think of the place of our judicial system if parties are left to freely decide what court orders to obey and which ones to ignore. Parties must realize that once they are brought to court they are subject to the jurisdiction of the court. Under Article **159(1)** of the Constitution, Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under the Constitution. In exercising judicial authority the Courts and Tribunals are, *inter alia*, to be guided by the principle that the purpose and principles of the Constitution shall be protected and promoted. Under Article **10(1)** of the Constitution the national values and principles of governance in the Article bind all State organs, State officers, public officers and all persons whenever any of them (a) applies or interprets the Constitution; (b) enacts, applies or interprets any law; or (c) makes or implements public policy decisions. Under clause **(2)(a)** of the same Article the national values and principles of governance include the Rule of Law.

17. I proceed from the premise that it is a crime unlawfully and intentionally to disobey a court order.[9] This type of contempt of court is part of a broader offence, which can take many forms, but the essence of which lies in violating the dignity, repute or authority of the court.[10] The offence has in general terms received a constitutional 'stamp of approval',[11] since the Rule of Law – a founding value of the Constitution – 'requires that the dignity and authority of the courts, as well as their capacity to carry out their functions, should always be maintained.'[12]

18. In the hands of a private party, the application for committal for contempt is a peculiar amalgam,[13] for it is a civil proceeding that invokes a criminal sanction or its threat. And while the litigant seeking enforcement has a manifest private interest in securing compliance, the court grants enforcement also because of the broader public interest in obedience to its orders, since disregard sullies the authority of the courts and detracts from the rule of law.

19. The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed 'deliberately and *mala fide*.'[14] A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe he/she is entitled to act in the way claimed to constitute the contempt. In such a case good faith avoids the infraction.[15] Even a refusal to comply that is objectively unreasonable may be *bona fide* (though unreasonableness could evidence lack of good faith).[16]

20. These requirements – that is the refusal to obey should be both *wilful* and *mala fides*, and that unreasonable non-compliance, provided it is *bona fide*, does not constitute contempt – accord with the broader definition of the crime, of which non-compliance with civil orders is a manifestation. They show that the offence is committed not by mere disregard of a court order, but by the deliberate and intentional violation of the court's dignity, repute or authority that this evinces.[17] Honest belief that non-compliance is justified or proper is incompatible with that intent. The Constitutional Court of South Africa,***[18]*** underlined the importance to the Rule of Law, of compliance with court orders in the following terms:-

> "Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. The Constitution states that the rule of law and supremacy of the Constitution are foundational values of our society. It vests the judicial authority of the state in the courts and requires other organs of state to assist and protect the courts. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. Failure to enforce court orders effectively has the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law."

21. It is an established principle of law that[19] in order to succeed in civil contempt proceedings, the applicant has to prove ***(i)*** *the terms of the order*, ***(ii)*** *Knowledge of these terms by the Respondent*, ***(iii).*** *Failure by the Respondent to comply with the terms of the order.* Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities.[20]

22. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand****[21]*** who succinctly stated:-

> "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.

23. It is the last test in paragraph **(d)** above that warrants detailed consideration. Unfortunately, the *ex parte* applicant never addressed it at all. On the face our transformative constitution with an expanded Bill of Rights, a pertinent question warrants consideration. Do constitutional values permit a person to be put in prison to enforce compliance with a civil order when the requisites are established only preponderantly, and not conclusively? In my view, a high standard of proof applies whenever committal to prison for contempt is sought because contempt of Court is quasi-criminal in nature.

24. Two principals emerge. The *first* is liberty:- it is basic to our Constitution that a person should not be deprived of liberty, albeit only to constrain compliance with a court order, if reasonable doubt exists about the essentials. The *second* reason is coherence:- it is practically difficult, and may be impossible, to disentangle the reasons why orders for committal for contempt are sought and why they are granted: in the end, whatever the applicant's motive, the court commits a contempt respondent to jail for Rule of Law reasons; and this high public purpose should be pursued only in the absence of reasonable doubt. Accordingly, it is impermissible to find an alleged contemnor guilty of contempt in the absence of conclusive proof of the essential elements. The requisite elements must be established beyond reasonable doubt. In such a prosecution the alleged contemnor is plainly an 'accused person.'

25. It should be noted that developing the common law thus does not require the prosecution to lead evidence as to the accused's state of mind or motive: once the three requisites mentioned earlier have been proved, in the absence of evidence raising a reasonable doubt as to whether the accused acted willfully and *mala fide*, all the requisites of the offence will have been established. And as O'Regan J pointed out, the power to imprison for coercive and non-punitive purposes is 'an extraordinary one'**:-**

> '*The power to order summary imprisonment of a person in order to coerce that person to comply with a legal obligation is far-reaching. There can be no doubt that indefinite detention for coercive purposes may involve a significant inroad upon personal liberty. Clearly it will constitute a breach of s 12 of the Constitution unless both the coercive purposes are valid and the procedures followed are fair. In this case there seems no doubt that the purpose is a legitimate one. It also seems necessary and proper, however, for the exercise of the power to be accompanied by a high standard of procedural fairness.'* ***[22]***

26. It is clear that contempt of court is not merely a mechanism for the enforcement of court orders. The jurisdiction of the superior courts to commit recalcitrant litigants for contempt of court when they fail or refuse to obey court orders has at its heart the very effectiveness and legitimacy of the judicial system. That, in turn, means that the court called upon to commit such a litigant for his or her contempt is not only dealing with the individual interest of the frustrated successful litigant but also, as importantly, acting as guardian of the public interest.[23]

27. Applying the principles discussed herein above to the facts of this case, I am not persuaded that the *ex parte* applicant has demonstrated that the Respondent willfully failed, refused and or neglected to obey the court order. *First*, it is contended that the University had transitional challenges which delayed the constitution of the Appeals Committee. *Second* and more fundamental, it is common ground that the *ex parte* applicant was invited to attend the hearing and in response to the invitation she attended. She admits attending the hearing and her version is that she informed the Appeals Committee that her lawyer had travelled and that she had filed the present application. The Respondents' version is that she was reluctant to proceed, and, that, she was rude and walked out. *Third*, the Respondent contends that it proceeded to find that there was no basis to set aside the decision and it upheld it.

28. After analyzing the facts of this case, I have no doubt in my mind that the *ex parte* applicant has not demonstrated bad faith on the part of the Respondent. There was no order barring the Committee from proceeding with the hearing. In my view, she ought to have obtained injunctive orders stopping the proceedings. The *ex parte* applicant's counsel heavily relied on a passage rendered in *Clerk & Others v Chadburn & Others*[24]which was adopted in several other local decisions. In my view, the said authority, and the principles stated in the said case has no precedential value to the facts and circumstances of this case. I hasten to buttress my proposition with the established position that it is settled law that a case is only an authority for what it decides. This position was correctly observed in *State of Orissa vs. Sudhansu Sekhar Misra* where it was held:-[25]

> "A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, LC said in Quinn vs. Leathem,**[26]**that "Now before discussing the case of Allen vs. Flood**[27]** and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides.. .." (Emphasis added)

29. The ratio of any decision must be understood in the background of the facts of the particular case.[28] It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.[29] It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.[30] In fact, I have in several decisions stated that each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect.[31] In deciding such cases, one should avoid the temptation to decide cases by matching the colour of one case against the colour of another.[32] To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive. Precedent should be followed only so far as it marks the path of justice, but one must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches.[33] My plea is to keep the path of justice clear of obstructions which could impede it.

30. The facts in *Clarke and Others v Chadburn and Others*[34] are that officials of a trade union intended to propose at a conference of the union that its rules be altered by inserting in the rules wide ranging disciplinary powers over members of the union. A day before the

conference some members opposed the rule and obtained an injunction restraining the Respondents and the union from putting, proposing, allowing to be proposed or passing at the conference any resolution proposing an alteration to the unions rules. The court granted the Respondents the liberty to apply to vary the orders, but, that, not withstanding, it proceeded to pass the resolution. Differently stated, in *Clark's* case, a resolution was passed in violation of an injunction. It is my contention that the facts in the instant case are distinguishable. There was no order barring the Respondent from proceeding with the hearing of the appeal.

31. More important is the fact that a decision was made. This court cannot annul the decision on the basis of the present application. In fact, among the reliefs sought, there is no prayer to that effect. A decision having been rendered, the *ex parte* applicant's viable option was to challenge the legality or propriety of the decision by way of a fresh Judicial Review proceeding. It is also my view that it was ill advised for the *ex parte* applicant to walk out of the proceedings. She cut the ground upon which she could stand to annul the decision. Additionally, this application was overtaken by events the moment a decision was made which to date remained unchallenged. It was also a serious mistake for the *ex parte* applicant to assume that the appellate decision could be annulled by way of the instant application whose prayers are clear.

32. The Vice Chancellor was not a party in the proceedings nor is he a party in the instant application. In any event there is no material before me to show that he was personally served with the order nor has it been demonstrated why he is personally liable. Additionally, the tests for granting an order of contempt discussed earlier have not been proved against him or the Respondent even in the slightest manner. The assertion that the invitation letter bore a wrong date cannot save the *ex parte* applicant case. The moment she attended the hearing, the mistake (if any) on the date was cured. Differently stated, she submitted herself to the process after attending hearing of the appeal pursuant to the same letter she is faulting.

33. Applying the principles of the law discussed above to the facts of this case, it cannot be said by any stretch of imagination that the Respondent or the Vice Chancellor willfully defied the court orders. Put differently, the ex parte applicant has failed to demonstrate the tests for contempt which are a pre-requisite to granting the orders sought.

34. In view of my herein above analysis and findings, the conclusion becomes irresistible that the *ex parte* applicant's application dated **28th** August 2018 is misconceived, has no merits and is one for dismissal.

35. Accordingly, I dismiss the *ex parte* applicant's application dated **28th** August 2018 with costs to the Respondent.

Orders accordingly.

Dated at Nairobi this 25th day of February, 2019

John M. Mativo

Judge

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[1] Citing *Justice Nyaribo v Clerk, Nyamira County Assembly* {2013}eKLR and *Raphael Mulewa Mkware & 515 Others v ACDC* {2013}eKLR.

[2][2] {1985} 1 ALL ER 211.

[3] Petition No. 518 of 2013.

[4] Citing *Refrigerator & Kitchen Untensils Ltd v Gulabhcad Popatlal Shah & Others*, Court of Appeal Civil App No. 39 of 1990.

[5] Citing *Miguna Miguna v Director of Public Prosecutions & 2 Others* {2018}eKLR & *Akber Abdulah Kassam Esmail v Equip Agencies Ltd & 4 Others* {2014}eKLR.

[6] See ***Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another*** **[2005] 1 KLR 828** ***Ibrahim, J*** (as he then was)

[7] See ***Awadh vs. Marumbu*** **(No 2) No. 53 of 2004 [2004] KLR 458,**

[8] See **Ojwang, J** (as he then was) in **B vs. Attorney General [2004] 1 KLR 431**

[9] S v Beyers **1968 (3) SA 70** (A).

[10] Melius de Villiers *The Roman and Roman-Dutch Law of Injuries* (1899) page 166: 'Contempt of court … may be adequately defined as an injury committed against a person or body occupying a public judicial office, by which injury the dignity and respect which is due to such office or its authority in the administration of justice is intentionally violated.' Cf *Attorney-General v Crockett* **1911 TPD 893** 925-6 per Bristowe J: 'Probably in the last resort all cases of contempt, whether consisting of disobedience to a decree of the Court or of the publication of matter tending to prejudice the hearing of a pending suit or of disrespectful conduct or insulting attacks, are to be referred to the necessity for protecting the fount of justice in maintaining the efficiency of the courts and enforcing the supremacy of the law.'

[11] *S v Mamabolo* **[2001] ZACC 17**; **2001 (3) SA 409** (CC) para 14, per Kriegler J, on behalf of the court (where contempt of court in the form of scandalising the court was in issue).

[12] Per Sachs J in *Coetzee v Government of the Republic of South Africa* **[1995] ZACC 7**; **1995 (4) SA 631** (CC) para 61, quoted and endorsed by the court in *Mamabolo* (above). In *Coetzee*, statutory procedures for committal of non-paying judgment debtors to prison for up to 90 days – which the statute classified as contempt of court – were held unconstitutional.

[13] JRL Milton 'Defining Contempt of Court' **(1968) 85 *SALJ* 387:** 'The concept of contempt of court is one which bristles with curiosities and anomalies. Of the various examples which may be chosen to illustrate this point perhaps the most striking is that of the classification of contempts of court into civil contempt (or contempt in procedure) and criminal contempt.'

[14] Frankel Max Pollak Vinderine Inc v Menell Jack Hyman Rosenberg & Co Inc **[1996] ZASCA 21**; **1996 (3) SA 355** (A) 367H-I; Jayiya v Member of the Executive Council for Welfare, Eastern Cape **2004 (2) SA 602**(SCA) paras 18 and 19.

[15]Consolidated Fish (Pty) Ltd v Zive **1968 (2) SA 517** (C) 524D, applied in Noel Lancaster Sands (Edms) Bpk v Theron **1974 (3) SA 688** (T) 691C.

[16] Noel Lancaster Sands (Edms) Bpk v Theron **1974 (3) SA 688** (T) 692E-G per Botha J, rejecting the contrary view on this point expressed Consolidated Fish v Zive (above). This court referred to Botha J's approach with seeming approval in Frankel Max Pollak Vinderine Inc v Menell Jack Hyman Rosenberg & Co Inc **[1996] ZASCA 21**; **1996 (3) SA 355** (A) 368C-D.

[17] See the formulation in *S v Beyers* **1968 (3) SA 70** (A) at 76E and 76F-G and the definitions in Jonathan Burchell *Principles of Criminal Law* (3ed, 2005) page 945 ('Contempt of court consists in unlawfully and intentionally violating the dignity, repute or authority of a judicial body, or interfering in the administration of justice in a matter pending before it') and CR Snyman *Strafreg* (4ed, 1999) page 329 ('Minagting van die hof is die wederregtelike en opsetlike (a) aantasting van die waardigheid, aansien of gesag van 'n regterlike amptenaar in sy regterlike hoedanigheid, of van 'n regsprekende liggaam, of (b) publikasie van inligting of kommentaar aangaande 'n aanhangige regsgeding wat die strekking het om die uitstlag van die regsgeding te beïnvloed of om in te meng met die regsadministrasie in daardie regsgeding').

[18]Burchell v. Burchell, Case No 364/2005

[19] See the High Court of South Africa In the case of *Kristen Carla Burchell vs Barry Grant Burchell*, Eastern Cape Division Case No. 364 of 2005

[20] Ibid, at page 4

[21] Available at *ip36.publications.lawcom.govt.nz*

[22]In De Lange vs Smuts **[1998] ZACC 6**; **1998 (3) SA 785** (CC) para 147.

[23] Fakie NO v CCII Systems (Pty) Ltd (653/04) [2006] ZASCA 52; 2006 (4) SA 326 (SCA) (31 March 2006).

[24] {1985} 1 ALL ER 211.

[25] MANU/SC/0047/1967.

[26] {1901} AC 495.

[27] {1898} AC 1.

[28] *Ambica Quarry Works vs. State of Gujarat and Ors.* MANU/SC/0049/1986

[29] Ibid

[30] Bhavnagar University v. Palitana Sugar Mills Pvt Ltd (2003) 2 SC 111 (vide para 59)

[31] In the High Court of Delhi at New Delhi February 26, 2007 W.P.(C).No.6254/2006, Prashant Vats Versus University of Delhi & Anr. (Citing Lord Denning).

[32] Ibid.

[33] Ibid

[34] {1985} 1 ALLER 211.