REPUBLICOF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

MISCELLANEOUS APPLICATION NO. 176 OF 2002

REPUBLIC.....APPLICANT

-VERSUS-

THE MANAGING DIRECTOR,

KENYA RAILWAYS CORPORATION.....RESPONDENT

PETER KIGUHI SWEGENY.....*EX PARTE* APPLICANT

JUDGMENT

[1] The *ex parte* Applicant, **Peter Kiguhi Swegeny** (hereinafter the Applicant), approached the Court vide his Notice of Motion dated **2 August 2002** pursuant to **Sections 8 and 9** of the **Law Reform Act**, **Chapter 22** of the **Laws of Kenya**; and what was **Order LIII Rule 1(1) and (2), Rules 3 and 4** of the **Civil Procedure Rules** for orders that:

> **[a]** an Order of Mandamus be issued against the Respondent herein, namely, the Managing Director of Kenya Railways Corporation, compelling him to satisfy the decretal sums due in **Eldoret Senior Principal Magistrate's Civil Suit No. 1327 of 1998** within 14 days from the date of service of the Order upon him, or within such period as the Court may deem fit and just to grant; and that in default, the said Managing Director be arrested for committal to civil jail for such period as the Court may deem fit and just; until such time that he satisfies the said Decree or shows sufficient cause to the satisfaction of the Court why he cannot satisfy the lawful judgment of the Court.
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> **[b]** That the Respondent be condemned to pay the costs of the application.

[2] The application was premised on the grounds that the Respondent, as the Managing Director of Kenya Railways Corporation, had unjustly and unreasonably failed, refused and/or neglected to satisfy the Decree issued in **Eldoret Senior Principal Magistrate's Civil Suit No. 1327 of 1998: Peter Kiguhi Swegenyi vs. Kenya Railways Corporation** since **11 May 2000**. In support of the application, the Applicant filed a Supporting Affidavit sworn on **2 August 2002**, in addition to the Statutory Statement of even date. Both documents advert to the fact that the applicant filed aforementioned suit claiming general and special damages, costs and interest in connection with injuries suffered by him in an accident that occurred on **3 October 1997** while in the course of his duties as an employee of **Kenya Railways Corporation** (the Corporation).

[3] It was further the averment of the Applicant that the case was duly heard and Judgment passed in his favour on **11 May 2000** for **Kshs. 300,000** General Damages, **Kshs. 1,200/=** special Damages and **Kshs. 30,000/=** for future medication, including physiotherapy. Costs were thereafter settled by consent at **Kshs. 49,995/=;** whereupon a Decree and Certificate of Costs were issued on **15 June 2001** for **Kshs. 431,637/=.** It was the contention of the Applicant that he then caused a notice dated **15 June 2001** to be issued to the Respondent, demanding for the sums due in accordance with the provisions of **Section 88(a)** of the **Kenya Railways Corporation Act, Chapter 397** of the **Laws of Kenya**; but that the Respondent had refused and/or neglected to settle and/or pay up the sums decreed. It was, thus, on that account that this application was filed.

[4] The application was opposed by the Respondent; and to that end Grounds of Opposition were filed herein dated **10 July 2006** averring as follows:

> **[a]** That the application is incurably defective as it offends the mandatory provisions of **Order LIII Rules 3(3), 4(1)** of the **Civil Procedure Rules;**
>
> **[b]** That the affidavit filed in support of the application offends the mandatory provisions of **Section 35** of the **Advocates Act;**

[c] That the application offends the mandatory provisions of **Order L Rule 3** of the **Civil Procedure Rules**;

[d] That the Applicant failed to annex the Order for leave in the substantive application;

[e] That the orders sought cannot issue against the Respondent and therefore that the application ought to be dismissed with costs;

[f] That the application offends the provisions of the **Kenya Railways Corporation Act.**

[5] The application was urged by way of written submissions, filed herein by Learned Counsel for the parties on **16 October 2018** and **9 November 2018**, respectively. Counsel for the Applicant reiterated the Applicant's assertion that following the delivery of Judgment by the lower court, a notice dated **13 June 2001** was issued and served on the Respondent demanding for the satisfaction of the ensuing Decree, in accordance with the provisions of **Section 88(a)** of the **Kenya Railways Corporation Act**, but that the Respondent failed and/or refused to comply with the same.

[6] It was therefore the submission of the Applicant that, since no justification has been shown as to why the decree has remained unpaid for 16 years, this is a fit and proper case for the Court to issue an Order of Mandamus, to compel the Respondent, as the Accounting Officer, to perform its statutory duty of settling the liabilities of the Corporation. Counsel relied on **Machakos High Court Misc. Application No. 173 of 2004: Republic vs. Permanent Secretary, Ministry of Water Resources**, in which the court found that the 1st Respondent, as a public body, had a duty to satisfy a decree issued against it; and **Republic vs. CEO, Independent Electoral and Boundaries Commission & Another [2016] eKLR,** for the proposition that an accounting officer can be compelled by way of Mandamus, to exercise a statutory duty in relation to the satisfaction of a court decree.

[7] Counsel for the Respondent, on the other hand, took issue with the application, contending that it does not meet the threshold for the grant of an Order of Mandamus, taking into account the provisions of **Section 87** of the **Kenya Railways Corporation Act, Section 35(1)** of the **Advocates Act, Section 4(4) of the Limitation of Actions Act, Order LIII Rules 3(3) and 4(1)** of the old **Civil Procedure Rules**, as well as **Order 50 Rule 4** of the **Civil Procedure Rules, 2010.**

[8] It was further the submission of Counsel for the Respondent that the Applicant has not demonstrated that it is the Respondent's statutory duty to settle the decretal amount. Counsel cited Joseph **Nyamamba & 4 Others vs. Kenya Railways Corporation [2015] eKLR, Gayatri Industries Ltd vs. Harambee Sacco Ltd [2004] eKLR** and **National Bank of Kenya Limited vs. Samuel Kibowen Towett [2015] eKLR** to buttress his submissions. He urged the Court to find merit in his arguments and to dismiss the application dated **2 August 2002** with costs. He also prayed that the applicant's claim be deemed as time-barred and for the execution proceedings predicated thereon to be accordingly set aside.

[9] Having carefully perused the court record, it is indubitable that leave was indeed applied for and obtained by the Applicant. The same was granted in **Eldoret High Court Miscellaneous Civil Application No. 20 of 2002.** I therefore have no hesitation in holding that the Respondent's argument, to the effect that the application is incompetent because the Order granting leave was not attached to the application, is untenable. Untenable because the file wherein leave was granted is now part of the record, courtesy of the Court Order dated **28 March 2006**. Moreover, a Further Affidavit was filed by the Applicant herein that had copies of the Order granting leave to file this application and the Decree as well as the Certificate of Costs issued by the lower court annexed to it as exhibits.

[10] The Respondent also took issue with the prayers sought by the Applicant contending that the remedy of Mandamus does not impose any personal liability upon the Respondent or any other officer of the Kenya Railways Corporation; and therefore that he cannot be arrested for committal to civil jail as sought by the Applicant. I am far from persuaded by this proposition, noting that the application is clear that the Respondent is the Managing Director; and that no particular individual has been specifically named, cited or singled out for arrest and committal to civil jail in their personal capacity. The argument is to say the least, premature and therefore does not merit the court's attention and consideration at this point in time.

[11] Thus, it is plain from the application, the Grounds of Opposition and the parties written submissions that only two main issues arise for the Court's determination; the first is technical, and it is the question around the competence of the application from the standpoint of the relevant provisions of **Order 53** of the **Civil Procedure Rules**, **the Kenya Railways Corporation Act, the Advocates Act** and **the Limitation of Actions Act;** while the second issue has to do with the merits of the application itself.

[a] On the Competence of the Application:

[12] The Respondent attacked the application dated **2 August 2002** from several fronts, contending that it does not meet the requisite threshold for the grant of an Order of Mandamus. Firstly, it was the contention of the Respondent that the application was incompetent for running afoul of **Order LIII Rules 3(3) and 4(1)** of the old **Civil Procedure Rules**. The said provisions were carried in the current **Civil Procedure Rules, 2010** as **Order 53 Rules 3(3) and 4(1);** and **Rule 3(3)** thereof provides that:

> **"An affidavit giving the names and addresses of, and the place and date of service on all persons who have been served with the notice of motion shall be filed before the notice is set down for hearing, and, if any person who ought to be served under the provisions of this rule has not been served, the affidavit shall state that fact and this rule has not been effected, and the affidavit shall be before the High Court on the hearing of the motion."**

[13] There is no indication, upon a careful perusal of the court record, that such an affidavit was ever filed by the Applicant. Similarly, the court record does confirm that no endorsement of the name and address of the advocate or law firm that drew the supporting affidavit was made on the Supporting Affidavit, as required by **Section 35** as read with **Section 34(1)** of the **Advocates Act, Chapter 16** of the **Laws of Kenya**. Hence, in the two instances, the question to pose is whether the omission is fatal to the application. My direct answer to that question is that the infractions are not of such a nature as would detract the court from considering the application on merits. This is because, in

respect of **Order 53 Rule 3(3)** of the **Civil Procedure Rules**, the Respondent was duly served and a response, by way of Grounds of Opposition was filed on his behalf. The Respondent has consequently been participating in these proceedings ever since.

[14] As regards **Section 35** of the **Advocates Act,** Counsel for the Respondent submitted that since the Supporting Affidavit flouts the provisions of **Sections 34 and 35** of the **Advocates Act,** it should be struck out alongside the Notice of Motion in respect of which it was filed. Counsel relied on **Gayatri Industries Ltd vs. Harambe Sacco Ltd [2004] eKLR** for the holding by **Ochieng, J**. that:

> **"If I permit the applicants to rely on the affidavit in issue, I would be giving them the benefit of a document that not only flouts procedural requirements, but one which has been criminalized by statute. I cannot do so, in line with the decision of the Court of Appeal for Kenya, in Civil Appeal No. 144 of 2001 Robert Njenga Ndichu vs. Brush Manufacturers Limited. Although I must also add that I do recognize the fact that whilst the appellant in that case was guilty of a deliberate disobedience of statutory provisions, there is no suggestion that in the case before me, the Plaintiffs or their advocates deliberately disobeyed the provisions of sections 34 and 35 of the Advocates Act. However, whether or not the omission to put the name and address of the advocate was wilful or inadvertent, it is nonetheless criminal..."**

[15] However, as has been pointed out herein above, that decision is a pre-2010 decision. The Constitution now mandates courts to administer justice without undue regard to procedural technicalities; and that constitutional imperative has percolated down to the statutory and procedural provisions as well as case law guiding the exercise of the courts' discretion in the administration of justice, which include the Oxygen Principle. Hence, in **Stephen Boro Gitiha vs. Family Finance Building Society & 3 Others, Civil appeal No. 263 of 2009**, **Nyamu, J.** aptly expressed the view that:

> **"The overriding objective overshadows all technicalities, precedents, rules and actions which are in conflict with it and whatever is in conflict with it must give way. A new dawn has broken forth and we are challenged to reshape the legal landscape to satisfy the needs of our time...In this case, the Plaintiff's Counsel did annex a copy of the judgment which issought to be reviewed. The extraction of a decree or order sought to be reviewed no doubt stems from the judgment and is a purely procedural omission which should not be used to impede access to justice..."**

[16] I would agree entirely with the above exposition and find that to strike out the Applicant's Supporting Affidavit merely for failure by his Counsel to have it endorsed as required by **Sections 34 and 35 of the Advocates Act,** as sought by the Respondent, would be an affront to the larger interests of substantive justice. Moreover, the import of an aspect of **Section 34(1)** of the **Advocates Act**, was the subject of interpretation in **National Bank of Kenya Limited vs. Anaj Warehousing Limited [2015] eKLR**, in which the Supreme Court pronounced itself thus:

> **"...the issue still remains: whether Section 34 of the Advocates Act actually invalidates all instruments of conveyance prepared by advocates who do not have current practising certificates. In our opinion, it is essential to establish the main objective of Section 34, as a basis for any conclusions. ThisSection prohibits unqualified persons from preparing certain documents. It is directed at "unqualified persons". It prescribes clear sanctions against those who transgress the prohibition. The sanctions prescribed are both civil and criminal in nature. But the law is silent as to the effect of documents prepared by advocates not holding current practising certificates....In these circumstances, how does the citizen's position rest? ... The transgressor, in our view, is the advocate, and not the client. The illegality is the assumption of the task of preparing the conveyancing document, by the advocate, and not the seeking and receiving of services from that advocate...The spectre of illegality lies squarely upon the advocate, and ought not to be apportioned to the client..."**

[17] Accordingly, the Supreme Court concluded its Judgment by stating that:

> **"The facts of this case, and its clear merits, lead us to a finding and the proper direction in law, that, no instrument or document of conveyance becomes invalid under Section 34(1)(a) of the Advocates Act, only by dint of its having been prepared by an advocate who at the time was not holding a current practising certificate..."**

[18] Clearly therefore, whereas the Supreme Court was here dealing specifically with the effect of documents prepared and filed by advocates not holding current practising certificates, that direction, to my mind, is applicable to the provisions of **Section 35**; such that, by parity of reasoning, I would be of the persuasion that failure by an Advocate to make the endorsement required thereby in itself ought not to invalidate an affidavit to the detriment of an innocent litigant. This is because the mischief targeted by **Section 35** is really slothful or inelegant drafting by advocates. Indeed, **Section 35(1)** of the **Advocates Act** is explicit in respect of such slips that:

> **"...any person omitting so to do shall be guilty of an offence and liable to a fine not exceeding five thousand shillings in the case of an unqualified person or a fine not exceeding five hundred shillings in the case of an advocate..."**

[19] My considered finding therefore is that the Applicant ought not to be impeded in accessing justice, on account only of the failure by his erstwhile Advocate to make the requisite endorsement on the Supporting Affidavit; noting that the other documents filed therewith, namely, the Notice of Motion and the Statutory Statement were appropriately endorsed and are otherwise compliant. Consequently, I take the view that this omission is not fatal to the application and that the Supporting Affidavit is competently before the Court.

[20] The Respondent also submitted that the Respondent's application was filed in disregard of **Section 87** of the **Kenya Railways Corporation Act, Chapter 397** of the **Laws of Kenya**. That provision reads:

> **"Where any action or other legal proceedings against the corporation for any act done in pursuance or execution or intended execution of this Act, or any alleged neglect or default in the execution of this Act or of any such duty or authority the following provisions shall have effect:-**

(a)The action or legal proceedings shall not be commenced against the corporation until at least one month's notice containing the particulars of the claim, and of intention to commence the action or legal proceeding, has been served upon the Managing Director by the plaintiff or his agent; and

(b) the action or legal proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuing injury or damage, within six months next after the cessation thereof."

[21] The Respondent accordingly urged the Court to dismiss the application with costs, the Applicant having failed to ensure compliance with this mandatory provision. To that end, reliance was placed by the Respondent's Counsel on **Joseph Nyamamba & 4 Others vs. Kenya Railways Corporation [2015] eKLR**, contending that the appeal was dismissed for failure to observe the mandatory provisions of **Section 87** aforementioned. A perusal of that authority however shows that there was no doubt in the mind of the Court of Appeal that the above stated provision applied in connection with the foundational action before the High Court and not the appeal itself. In this application, the Court is not concerned with whether or not the requisite notice was served prior to the filing of the lower court matter because the point was not taken herein.

[22] This application, it bears repeating, is an invocation of the prerogative powers of the Court under **Order 53** of the **Civil Procedure Rules** to command a public officer to perform a statutory duty in respect of which there is a set procedure. The Applicant duly complied by issuing a notice to the Deputy Registrar dated **26 January 2002** as required by **Order LIII Rule 1(3)** of the **Civil Procedure Rules**, and by seeking and obtaining before hand, the leave of the Court to commence the Judicial Review application as by law required. To my mind, that suffices for the purposes of this Judicial Review application. I find succour in this point of view in **Mike J.C. Mills & Another vs. the Posts & Telecommunications Nairobi HCMA No. 1013 of 1996** in which it was held that:

"Judicial review matters are commenced by a notice to the Registrar under Order 53 rule 1(3) of the Rules. This is a Notice which the Registrar is supposed to and ought to be dispatching to the Attorney General or the intended Respondent to come and oppose the application for leave if he or it so wishes and that is the only Notice required to be given on account of intended Judicial Review applications...the application for leave does not commence judicial review until such permission is granted to institute appropriate Judicial Review application...Judicial Review aims at providing justice at minimum delays and therefore a multitude of Notices to be given before an application for judicial review is made is contrary to that spirit of judicial review...Public institutions cannot afford luxuries of bad manners."

[23] Lastly, the Respondent questioned whether an order in execution of a Judgment can be sought, as has been done herein, after 12 years; granted the provisions of **Section 4(4)** of the **Limitation of Actions Act**. According to the Respondent, the Applicant had not explained why he has never executed his judgment for a period of over 16 years; and is therefore guilty of laches and has no one but himself to blame for the situation in which he now finds himself. Counsel relied on **National Bank of Kenya Limited vs. Samuel Kibowen Towett [2015] eKLR** in support of his argument.

[24] Section 4(4) of the **Limitation of Actions Act** provides that:

"An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due."

[25] In the premises, the question to pose is whether this action was filed 12 years after the date of Judgment. The court record shows that the Judgment of the lower court was delivered on **11 May 2000** alongside a stay of execution for 30 days. Thereafter, costs were assessed by consent; and it was not until **15 June 2001** that the Decree was issued and the process of execution commenced immediately by way of Notice of Judgment and a demand for payment to the Respondent's Managing Director. The Applicant averred that it was on account of the obstinacy of the Respondent that the instant application was filed. The application, as has been pointed out herein above, was filed on **2 August 2002.**

[26] It is plain therefore that the application was filed well within the 12 year window and is therefore not barred under **Section 4(4)** of the **Limitation of Actions Act**. In my respectful view, it is immaterial, for purposes of reckoning time, that the application was not determined within 12 years. In this regard, I would, with due respect, depart from the position taken by **Kamau, J.** in **National Bank of Kenya Limited vs. Samuel Kibowen Towett [2015] eKLR** and instead endorse the holding by **Mutungi, J.** in **Hudson Moffat Mbue vs. Settlement Fund Trustees & 3 Others, ELC No. 5704 of 1992 (OS)** that:

"...the expression "An action may not be brought upon a judgment after the end of twelve years from the date on which judgment was delivered ..." means that unless an application has been brought for enforcement of the judgment and has been completed and/or the same has not been concluded by the time the 12 year period expires, no fresh action for enforcement of the judgment can be brought after the expiry of 12 years from the date of the delivery of the judgment."

[27] Thus, I fully agree with the decision in **Jestimore Simwenyi vs. Samson Sichangi [2016] eKLR**, the it was held that:

"The Notice to Show Cause was issued on 6.4.2001. The applicant's argument that the order of eviction was issued on 6.4.2009 is not true as the order of eviction was issued on 6.4.2001 and therefore the time starting running on the date of judgment and stopped running when the application for execution was made in the year 1999."

[28] More importantly in **Lucy Mirigo & 550 Others vs. Minister for Lands and 4 Others [2014] eKLR,** the Court of Appeal

underscored the point that there is no limitation period for purposes of the relief of Mandamus. It expressed itself thus:

> **"On our part, we have examined the provisions of Order 53 of the Civil Procedure Act which is the juridical basis for an application for mandamus. Rule 2 of Order 53 provides a six month limitation period for an order of Certiorari. There is no limitation period to institute an action for mandamus. Limitation for purposes of mandamus is to be determined by the reasonableness and length of time between the cause of action and time of filing suit."**

[29] In this case, the application was filed on **2 August 2002** within 2 years or so of the Judgment and about one year and two months from the date of the Decree. Accordingly, the Respondent's arguments premised on the provisions of **Section 4(4)** of the **Limitation of Actions Act** are, in my view, untenable; and I so find.

[b] <u>On the merits of the application</u>

[30] Needless to say that Mandamus is a prerogative relief available to litigants under **Article 23(3)(f)** of the Constitution and **Order 53** of the **Civil Procedure Rules**. Its scope was well explicated in **Halsbury's Laws of England, 4th Edition, Volume 1** thus:

> **"The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual..."**

[31] In this matter, there is no dispute that the Respondent is a state corporation for purposes of **Section 2(b)** of the **State Corporations Act, Chapter 446** of the **Laws of Kenya**, as read with **Section 3** of the **Kenya Railways Corporation Act**. It is therefore a public body and its Managing Director is a public official entrusted with public duties as set out in Sections 4 and 5, among other provisions of the Act. The Applicant has demonstrated herein that it obtained a Decree against the **Kenya Railways Corporation,** but has been unable to realize the fruits of that Decree because it is the law, by dint of **Section 88** of the **Kenya Railways Corporation Act, Chapter 397** of the **Laws of Kenya**, that:

> **"Notwithstanding anything to the contrary in any law--**
>
> **(a) where any judgment or order has been obtained against the Corporation, no execution or attachment, or process in the nature thereof, shall be issued against the Corporation or against any immovable property of the Corporation or any of its trains, vehicles, vessels or its other operating equipment, machinery, fixture or fittings; but the Managing Director shall, without delay, cause to be paid out of the revenue of the Corporation such amounts as may, by the judgment or order, be awarded against the Corporation to the person entitled thereto;**
>
> **(b) no immovable property of the Corporation or any of its trains, vehicles, vessels or its other operating equipment, machinery, fixtures or fittings shall be seized or taken by any person having by law power to attach or distrain property without the previous written permission of the Managing Director.**

[32] It is manifest from the above provision that the Respondent has the statutory duty imposed on him by **Section 88(a)** aforementioned, to cause to be paid out of the revenue of the Corporation the amounts due to the Applicant on account of the Decree aforementioned; and to ensure its satisfaction as soon as practicably possible. It was however averred by the Applicant that a notice calling for payment dated **15 June 2001** to the Respondent elicited no response; and that since then the Respondent has refused and/or neglected to settle the Decree. Those facts were not refuted, granted that the Respondent opted to respond to the application by way of Grounds of Opposition. Moreover, although the Respondent had an opportunity to explain its predicamemt in connection with the non-payment of the Applicant's Decree, no such explanation was provided herein; and no evidence was tendered to show what efforts, if any, had been made by the Respondent to pay the Applicant. There is no gainsaying that the Applicant is barred, by law, from executing his Decree against the Corporation; or that he has no other way of realizing the fruits of his Judgment. It is thus plain to me that the Applicant is entitled to the order of Mandamus as prayed. In this connection, I would agree with and adopt the expressions of **Odunga, J.** in **<u>Republic vs. the Attorney General & Another, Ex parte James Alfred Keroso</u>** that:

> **"...Unless something is done, he will forever be left baby sitting his barren decree. This state of affairs cannot be allowed to prevail under our current Constitutional dispensation in light of the provisions of Article 48 of the Constitution which enjoins the state to ensure access to justice for all persons. Access to justice cannot be said to have been ensured when persons in whose favour judgments have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgment due to roadblocks placed on theirpaths by actions or inactions of public officers. Public offices, it must be remembered are held in trust for the people of Kenya and Public Officers must carry out their duties for the benefit of the people of the Republic of Kenya..."**

[33] In the result, I would allow the Applicant's application dated **2 August 2002** and grant orders in his favour as hereunder:

> **[a]** That an Order of Mandamus be and is hereby issued compelling the Respondent herein, namely, the Managing director of Kenya Railways Corporation to satisfy the decretal sum of **Kshs. 431,637/=** due in **Eldoret Senior Principal Magistrate's Civil Suit No. 1327 of 1998** as at **15 June 2001** together with accrued interest at court rates within **three (3) months** from the date of service of the Order upon him; in default, the Applicant shall be at liberty to commence contempt proceedings as appropriate.

[b] The prayer that the said Managing Director be arrested for committal to civil jail for such period as the Court may deem fit and just until such time that he satisfies the said Decree or shows sufficient cause to the satisfaction of the Court why he cannot satisfy the lawful judgment of the Court, being premature, is declined for now.

[c] That the costs of the application be borne by the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 21ST DAY OF FEBRUARY 2019

OLGA SEWE

JUDGE