



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KITALE**

**WINDING UP CAUSE NO 1 OF 2011**

**AFRICA OIL TURKANA LTD.....1<sup>ST</sup> PETITIONER**

**AFRICA OIL CORPORATION.....2<sup>ND</sup> PETITIONER**

**AFRICA OIL KENYA BV.....3<sup>RD</sup> PETITIONER**

**AND**

**0903658 B.C. LTD (FORMERLY CENTRIC**

**ENERGY CORPORATION).....SUPPORTING CREDITOR**

**VERSES**

**INTERSTATE PETROLEUM COMPANY LTD.....RESPONDENT**

**AND MAOSA KENGARA MONENA.....1<sup>ST</sup> CONTRIBUTOR**

**ERIC PATRICK ADERA OBAT.....2<sup>ND</sup> CONTRIBUTOR**

**MOSES OMBOYO ONYANGO.....3<sup>RD</sup> CONTRIBUTOR**

**LUCY MUTHONI GATIMO.....4<sup>TH</sup> CONTRIBUTOR**

**EDWARD KINGS ONYANCHA MAINA.....5<sup>TH</sup> CONTRIBUTOR.**

**RULING**

1. There are three sets of application to be considered in this ruling which in the courts view is appropriate to lump them together as it will save the precious judicial time.
2. The first application is by the 5<sup>th</sup> Contributor herein hereinafter referred to as “the Contributor”. The same is dated 22<sup>nd</sup> March, 2018 and he prays that the orders given by Githinji, J on 16<sup>th</sup> February, 2018 be declared null and void. He further prays that the warrants of arrest against the petitioners and in particular MARK DINGLEY, DONALD MAHAGA and ANN WANJIRU be reissued.
3. The application by the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners dated 16<sup>th</sup> February, 2018 among others pray that the warrants of arrest against DONALD MAHAGA and ANN WANJIRU obtained by the 5<sup>th</sup> Contributor be set aside and further restraining orders be issued against police from arresting the said persons and or the Petitioners officers or at all.
4. A similar application has been filed by the firm of Daly & Inamdar in which they have sought such restraining orders against the 5<sup>th</sup> Contributor.
5. The court after the parties had exchanged their respective replying affidavits as well as the grounds of objection ordered that they file their written submissions as well as the relevant authorities if need be. The 5<sup>th</sup> Contributor has all along acted in person.

6. The history of this matter is long and winding. The Respondent filed this winding up cause against Interstate petroleum for inability to pay the sum of kshs. 4,915,221 pursuant to some taxed costs. The Winding Up petition was struck out and the five Contributors awarded costs. The 5<sup>th</sup> Contributor's bill was eventually agreed by consent at kshs. 115,925.

7. From the record of the court and the other related rulings which are already within the knowledge of the parties it appears that the said amount which was to be shared between the contributor and others was deposited in court.

8. The ruling of this court dated 14<sup>th</sup> February, 2017 has captured the facts surrounding the issues of the costs very well. That decision was not appealed against by any of the parties herein especially that Contributor.

9. On the contrary and despite finding that the decree has been satisfied way beyond what was ordered the taxing master the 5<sup>th</sup> Contributor went ahead to obtain some warrants of arrest against the persons mentioned above.

10. This court takes exception to the manner in which the contributor has attempted to execute the decree. As at 26<sup>th</sup> May, 2014 he was advised to make a formal application to have a portion of the decretal amount be released to him as the same was to be shared out with others. The taking out the warrants was in bad taste to say the least and was to settle some unnecessary scores against some parties herein.

11. The application against the orders of my brother Githinji, J has no basis at all. There is no reason why the same should be stayed. All that remains in this matter is the payment of the costs awarded to the parties stated above. The said amount was deposited in court and some portion paid to some auctioneers.

12. In the premises I find the application by the respondents legitimate and merits the protection of this court. For the above reasons the application by the 5<sup>th</sup> contributor dated 22<sup>nd</sup> March, 2018 is disallowed with costs to the Respondents.

13. The applications dated 16<sup>th</sup> February, 2018 and 19<sup>th</sup> February, 2019 are allowed as follows:

- a). **The warrants of arrest issued on the 7<sup>th</sup> February, 2018 against DONALD MAHAGA and ANN WANJIRU and all the consequential orders are hereby set aside.**
- b). **Any claim by the 5<sup>th</sup> Contributor in respect to the costs herein, If any, should be directed to the respective law firms on records and not to their clients directly.**
- c). **Any further claim by the Contributor in respect to this winding up cause ought to be instituted with the leave of the court.**
- d). **The Applicants shall have the costs of these applications.**

**Dated, signed and delivered at Kitale in open court at Kitale this 28<sup>th</sup> day of May, 2019.**

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**H. K. CHEMITEI**

**JUDGE**

**28/5/19**

**In the presence of:**

**Onyancha for the 5<sup>th</sup> Contributor**

**No appearance for the Respondent**

**Court Assistant – Kirong**

**Ruling delivered in open court**