**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILINMANI LAW COURTS**

**JUDICIAL REVIEW DIVISION**

**JUDICIAL REVIEW CASE NO. 463 OF 2017**

**IN THE MATTER OF ADVOCATE-CLIENT BILL OF COSTS**

**BETWEEN**

**MENGICH T/A MENGICH & CO ADVOCATES.....1ST APPLICANT**

**BITALA T/A BITALA & CO ADVOCATES.....2ND APPLICANT**

**VERSUS**

**JOSEPH MABWAI.....1ST RESPONDENT**

**JOSEPH KORIR.....2ND RESPONDENT**

**ROBERT K. MUTAI.....3RD RESPONDENT**

**PAUL RUTO.....4TH RESPONDENT**

**JOSEPH CHEPKWONY.....5TH RESPONDENT**

**WILSON KEPLELACH.....6TH RESPONDENT**

**JOSEPH CHERUIYOT.....7TH RESPONDENT**

**SAMMY LANGAT.....8TH RESPONDENT**

**JOSEPH KOECH.....9TH RESPONDENT**

**SAMUEL C. MUTAI.....10TH RESPONDENT**

**SOT TEA GROWERS RURALS CO-OPERATIVE SAVINGS**

**AND CREDIT SOCIETY LIMITED.....11TH RESPONDENT**

**AND**

**EQUITY BANK (K) LTD.....GARNISHEE**

**RULING**

1. This ruling disposes two applications, namely, the application dated **28th** March 2018 (herein after referred to as the first application) and

the application dated **28th** May 2018 (herein after referred to as the second Application).

**The first application.**

2. In the first application, M/s Mengich & Co Advocates and Bitala & Co Advocates seek the following orders:-

*a. Spent.*

*b. **That** the restraining (sic) order be placed on Account No. **1220273566837** held and operated at Equity Bank Kenya, Bomet Branch in the names of the **11th** Respondent herein Sot Tea Growers Rural Co-operatives and Savings Limited (Stegro Sacco Limited) barring the **1st** to **10th** Respondents from carrying out any transaction on the said account pending the hearing and determination of this application.*

*c. **That** the credit in deposit account No. **1220273566837** at Equity Bank of Kenya in the names of Stegro Sacco, Nairobi or any other of the **11th** Respondent's bank accounts in any banking institutions(s) within the jurisdiction of this honourable court be utilized to pay the sum of **Ksh. 6,500,000/=** to Mengich & Co Advocates and **Ksh. 3,000,000/=** to Bitala & Co Advocates.*

*d. **That** the credit in deposit account No. **1220273566837** at Equity Bank of Kenya in the names of Stegro Sacco be utilized to pay the Advocates fees for the first and second applicants.*

*e. **That** the garnishee be directed to transfer the costs of **Ksh. 6,500,000/=** to Mengich & Co Advocates Account No. **01120305595600** held at Co-operative Bank, Aga Khan Walk and **Ksh. 3,000,000/=** to Bitala & Co Advocates Account No. **1183318618** held at KCB Bank Milimani High Court as per the agreement.*

*f. **That** the garnishee be directed to transfer the costs of **Ksh. 4,223,177/=** to Mengich & Co Advocates Account No. **01120305595600** held at Co-operative Bank, Aga Khan Walk and **Ksh. 2,000,000/=** to Bitala & Co Advocates Account No. **1183318618** held at KCB Bank Milimani High Court as per the Ref. letter No. **CS/6570/Vol.1/125.***

*g. **That** the garnishee be directed to hold a minimum balance of **Kh. 16,000,000/=** (Sixteen Million) on account No. **1220273566837** to be used to settle the legal fees for the first and second applicants pending the hearing and determination of this suit.*

*h. **That** the costs of this application be borne by the Respondents and be recovered and retained out of the money held by the garnishee.*

3. The core grounds in support of the application are that the applicants agreed to have all the matters adversely affecting the operations of Sot Tea Growers Rurals Co-operative Savings and Credit Society Ltd withdrawn/settled out of court with costs to be paid by the society and agreed on the amounts payable. Further, the applicants state that the parties agreed on the costs payable to the respective advocates vide a consent agreement dated **8th** September 2017 duly signed by all the parties involved in the pending suits.

4. The applicants also state that upon receipt of the funds from the government, the officials of the **10** Respondent, opened a new account at Equity Bank with a view to diverting the money from the accounts known to their advocates so as to deprive them.

5. The applicants have annexed to the supporting affidavit of **Andrew Mengich** a consent order recorded in this case. The relevant paragraph provides "that costs be agreed by the parties. In default of any agreement, the same be taxed as per scale at a later date, when the monies are dispersed to the 12th Respondent, the Sacco." **Mr. Mengich** averred that the parties agreed on fees, and, despite receiving a grant of Ksh. 200,000,000/=, the Respondents have refused to pay the said sum.

6. The application is opposed. On record are grounds of objection filed by the Respondents counsel stating that:- *(a) That the applicants have filed a bill of costs at Kericho; (b) That there are no court orders to be enforced by way of garnishee proceedings and that the procedure adopted by the Respondents is irregular; (c) That the costs have not been agreed upon; (d) That there are no garnishee proceedings to warrant the courts intervention.*

*7. **Mr. Mengich** for the applicant argued that the application is premised on the consent order recorded on **10th** October 2017 and the agreement dated **8th** September 2017.*

8. **Miss Nyakora** for the Hon. Attorney General confirmed that they did not file any responses to the two applications because they do not affect the AG, but nevertheless, argued that the consent on fees was subject to availability of funds and that the consent letter was not filed in court, hence, this application has no legal basis.

9. **Mr. Macharia** for the garnishee argued that in absence of a court order, all the money in the account was transacted/transferred by the Respondents.

10. **Mr. Mutai** for the **12th** Respondent argued that the application lacks legal basis because there is no certificate of costs. Also, he argued that the **12th** Respondent was not a party to the consent relied on and that the **12th** Respondent did not appoint the firm of Mengich & Co

11. In my view, this application fails on the following grounds. First, the Respondents in the Application are not parties to this suit, yet, they are named as Respondents in the application under consideration. Court orders only bind parties before it. This is a fatal defect which

renders the application before me incompetent.

12. *Second*, being a garnishee application, the only proper party to be garnisheed is the Bank. The rest of the Respondents are improperly enjoined in the application since they are not holding any money capable of being garnisheed nor has it been alleged they hold any funds either individually of jointly. There is nothing to show that they are indebted to a judgment debtor as the law requires.

13. *My above view is fortified by* Order **23,** Rule **1** of the Civil Procedure Rules, 2010 on attachment of debts which provides that:-

> *1 (1) A court may, upon the ex parte application of a decree- holder, and either before or after an oral examination of the judgment-debtor, and upon affidavit by the decreeholder or his advocate, stating that a decree has been issued and that it is still unsatisfied and to what amount, and that another person is indebted to the judgment-debtor and is within the jurisdiction, order that all debts (other than the salary or allowance coming within the provisions of Order 22, rule 42 owing from such third person (hereinafter called the "garnishee") to the judgment-debtor shall be attached to answer the decree together with the costs of the garnishee proceedings; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay to the decree- holder the debt due from him to the judgmentdebtor or so much thereof as may be sufficient to satisfy the decree together with the costs aforesaid*

14. *Third, t*he above rule contemplates the existence of a decree for the amount claimed. There is no decree before me. The applicants base their application on a consent recorded on **10th** October 2017. The relevant part of the consent order reads *"That costs be agreed by the parties. In default of any agreement, the same be taxed as per scale at a later date when the monies are dispersed to the **12th** Respondent, the Sacco."*

15. Curiously, the applicant never filed their bill of costs in court for taxation as the law demands. The costs were not agreed upon and they were disputed before me. I fail to understand how the applicants expected to sustain a garnishee application in absence of a court decree.

16. *Fourth*, the applicants base their application on a document allegedly signed by three firms of advocates who were the beneficiaries of the funds. The document is not signed by any of the Respondents in this application or the Respondents in the suit. It cannot be said to be binding on the Respondents in the application before me or the Respondents in this suit.

17. *Fifth*, the document is not a court decree to satisfy the requirements of the above rule. The applicants never filed their Bills of Costs in court for taxation. There is no judgment-debtor before me as the law requires. It follows that the application lacks both substance and legal basis to stand on. The applicant's application is fatally and incurably defective.

18. *Sixth*, the procedure adopted by the applicants is totally wrong and goes against the above cited rule. Garnishee proceeding otherwise known as 'garnishment' is a judicial process of execution or enforcement of monetary judgment whereby money belonging to a judgment debtor, in the hands or possession of a third party known as the 'Garnishee' (usually a bank), is attached or seized by a judgment creditor, the 'Garnisher' or 'Garnishor', in satisfaction of a judgment sum or debt. By its nature, Garnishee proceeding is "**sui generis,**" and different from other Court proceedings, although it flows from the judgment that pronounced the debt.[1]

19. Generally, Garnishee proceedings is done in two different stages.[2] The first stage is for the garnishee order *nisi*, while the second stage is for the garnishee order *absolute.* At the first stage, the judgment creditor makes an application *ex parte* to the Court that the judgment debt in the hands of the third party, the Garnishee, be paid directly to the judgment creditor unless there is explanation from the Garnishee why the order *nisi* should not be made *absolute.* If the judgment creditor satisfies the Court on the existence of the Garnishee who is holding money due to the judgment debtor, such third party (Garnishee) will be called upon to show cause why the judgment debtor's money in its hands should not be paid over to the judgment creditor, and if the Court is satisfied that the judgment creditor is entitled to attach the debt, the Court will make a garnishee order *nisi* attaching the debt.[3]

20. The essence of the order *nisi* is to direct the Garnishee to appear in court on a specified date to show cause why an order should not be made upon him for the payment to the judgment creditor of the amount of debt owed to the judgment debtor. It is a requirement that a copy of the order *nisi* must be served on the Garnishee and judgment Debtor at least 7 days before the adjourned date for hearing. The second stage is for the garnishee order absolute, where on the adjourned date, the Garnishee fails to attend court or show good cause why the order *nisi* attaching the debt should not be made absolute, the Court may subject to certain limitations make the garnishee order absolute. The Garnishee, where necessary also have an option of disputing liability to pay the debt. The applicants ignored these procedures.

21. The primary object of a garnishee order is to make the debt due by the debtor of the judgment debtor available to the decree holder in execution without driving him to the suit. The court may, in the case of debt (other than a debt secured by a mortgage or charge), upon the application of the attaching creditor, issue a notice to garnishee liable to pay such debt, calling upon him either to pay into court the debt due from him to the judgment debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so.

22. *Seventh*, the order contemplated by Order **23** is discretionary and the court may refuse to pass such order if it is inequitable. The discretion, however, must be exercised judicially. Where the court finds that there is *bona fide* dispute against the claim and the dispute is not false or frivolous, it should not take action under this rule. Before me, the Respondents disputed the amounts. Further, counsel for the Bank stated that the funds have since been transferred from the accounts. A bank statement produced in court confirmed this position. Even if the proper procedure had been followed and all the other requirements discussed earlier satisfied, in view of the foregoing revelations, the court would be inclined to decline to exercise its discretion in favour of the applicant.

23. In view of the foregoing analysis and exposition of the law, I find and hold that the first application fails. The application is totally misconceived, bad in law and in substance and the same is incurably defective. I hereby dismiss it with costs to the Respondents.

24. I now turn to the second application. At the hearing counsel confirmed that he is pursuing the following orders:-

> *a. **That** summons do issue to **Joseph Mabwai, Joseph Korir, Robert K. Mutai, Paul Ruto, Joseph Chepkwony, Wilson Keplelach, Joseph Cheruiot, Sammy Langat, Joseph Koech, Samuel C. Mutai** being the representatives of the **12th** Respondent to personally appear in court and show cause why they should not be committed to civil jail for contempt of court for a period of six months.*
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> *b. **That** the honourable court be pleased to find that **Joseph Mabwai, Joseph Korir, Robert K. Mutai, Paul Ruto, Joseph Chepkwony, Wilson Keplelach, Joseph Cheruiot, Sammy Langat, Joseph Koech, Samuel C. Mutai** are in contempt of court orders issued on the **11th** October 2017.*
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> *c. **That** the honorable court be pleased to grant orders for the arrest and detention of **Joseph Mabwai, Joseph Korir, Robert K. Mutai, Paul Ruto, Joseph Chepkwony, Wilson Keplelach, Joseph Cheruiot, Sammy Langat, Joseph Koech, Samuel C. Mutai** cited above in prison for a term not exceeding six months for contempt of court orders.*
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> *d. **That** in the alternative this court be pleased to issue an order of sequestration by directing the **12th** Respondents officials to purge the acts of disobeying the court orders and adhere to management of their Sacco without intervening in the affairs of the Tea Factory.*
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> *e. **That** the applicants be granted leave to pursue criminal contempt proceedings against **Joseph Mabwai, Joseph Korir, Robert K. Mutai, Paul Ruto, Joseph Chepkwony, Wilson Keplelach, Joseph Cheruiot, Sammy Langat, Joseph Koech, Samuel C. Mutai** for defying orders of Hon. Jusyice G.V. Odunga issued on **10th** October 2017 and punished accordingly.*
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> *25. The grounds relied upon are that:- (a) the cited persons have refused to comply with court orders which they duly consented to and caused to be filed/adopted in court; (b) that the Respondents were served with the court orders, but, decided to break into the Tea factory premises and changed the locks and have fraudulently attempted to change the shareholding/directorship holding of EPZ Tea factory at the company's registry; (c) that the Respondents are deliberately disobeying the court orders to render the operations of the EPZ Tea factory impossible*
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> *26. The application is opposed. **Joseph Mabwai**, in opposition to the application swore the Replying Affidavit dated **11th** June 2018. He averred inter alia that all the cited persons are not parties to this suit, and that on **8th** December 2017, an extra ordinary General Meeting of Stegro EPZ Factory Lt resolved that that the applicants cease being directors by way of rotation in conformity with the company's Articles of Association, and that the Respondents were appointed as the new directors. He averred that the applicants have not challenged the validity of the said extra-ordinary general meeting. He also averred that the applicants are no-longer directors or officials of the company. Finally, he averred that the Respondents have not disobeyed any orders.*
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> *27. **Mr. Mengich** for the applicants submitted that the Respondents have disobeyed the court order. In particular, he argued that they convened a meeting to discuss issues touching on the consent order, and that, they failed to pay the advocates as per paragraph **5** of the order.*
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> *28. The crux of **Mr. Mutai's** submission was that that the Respondents did not violate any court order[4] and that the Respondents were not served with the court order.*

29. Contempt of court has been defined as a willful disregard or disobedience of a public authority. In its broad sense, contempt is a disregard of, or disobedience to, the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behavior or insolent language in its presence or so near thereto as to disturb its proceedings or to impair the respect due to such a body. In its restricted and more usual sense, contempt comprehends a despising of the authority, justice, or dignity of a court. The phrase *contempt of court* is generic, embracing within its legal signification a variety of different acts.

30. The power to punish for contempt is inherent in all courts, and need not be specifically granted by statute. It lies at the core of the administration of a judicial system. Indeed, there ought to be no question that courts have the power by virtue of their very creation to impose silence, respect, and decorum in their presence, submission to their lawful mandates, and to preserve themselves and their officers from the approach and insults of pollution. The power to punish for contempt essentially exists for the preservation of order in judicial proceedings and for the enforcement of judgments, orders, and mandates of the courts, and, consequently, for the due administration of justice. The reason behind the power to punish for contempt is that respect of the courts guarantees the stability of their institution; without such guarantee, the institution of the courts would be resting on a very shaky foundation. Contempt of court is of two kinds, namely: direct contempt, which is committed in the presence of or so near the judge as to obstruct him in the administration of justice; and constructive or indirect contempt, which consists of willful disobedience of the lawful process or order of the court.

31. Section 4 (1) (a) of the Contempt of Court Act[5]defines civil contempt as "means willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court."

32. The *Black's Law Dictionary;*[6] defines contempt as:-

> *" Contempt is a disregard of, disobedience to, the rules, or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body."*

33. In book *The Law of Contempt*[7] learned authors **Nigel Lowe** & **Brenda Sufrin** state a follows:-

*"Coercive orders made by the courts should be obeyed and undertakings formally given to the courts should be honoured unless and until they are set aside. Furthermore it is generally no answer to an action for contempt that the order disobeyed or the undertaking broken should not have been made or accepted in the first place. The proper course if it is sought to challenge the order or undertaking is to apply to have it set aside."*

34. In *Econet Wireless Kenya Ltd vs Minister for Information & Communication of Kenya & Another*[8] the court stated:-

*"It is essential for the maintenance of the Rule of Law and order that the authority and the dignity of our Courts are 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 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."*

35. Contempt proceedings are *quasi-criminal* in nature and since the liberty of a person is at stake, the standard of proof is higher than in civil cases. The facts and the evidence adduced must demonstrate clear, willful, flagrant or reckless disobedience of the court order. In the case of *Gatharia K. Mutikika vs Baharini Farm Ltd*[9] it was held as follows:-

*"The Courts take the view that where the liberty of the subject is, or might be involved, the breach for which the alleged contemnor is cited must be precisely defined. A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily proved... I must be higher than proof on a balance of probabilities, almost, but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. it is not safe to extend it to offence, which can be said to be quasi-criminal in nature. However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of judges to see whether there is no other mode which is not open to the objection of arbitrariness, and which can be brought to bear upon the subject. A judge must be careful to see that the cause cannot be mode of dealing with persons brought before him. Necessary though the jurisdiction may be, it is necessary only in the sense in which extreme measures are sometimes necessary to preserve men's rights, that is, if no other pertinent remedy can be found... Applying the test that the standard of proof should be consistent with the gravity of the alleged contempt.... it is competent for the court where a contempt is threatened or has been committed, and on an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not."*

36. In *Peter K. Yego & Others vs Pauline Nekesa Kode*[10]the court recognizing that contempt of court is quasi-criminal, and held that it must be proved that one has actually disobeyed the court order before one is cited for contempt. The applicant in a application for contempt must prove beyond peradventure that the respondent is guilty of contempt.[11]

37. The High Court of South Africa in the case of *Kristen Carla Burchell vs Barry Grant Burchell*[12] held that 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. [13]

38. Writing on proving the elements of civil contempt, learned authors of the book *Contempt in Modern New Zealand*[14] stated 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.*

39. The power to commit for contempt is one to be exercised with great care. An order committing a person to prison for contempt is to be adopted only as a last resort. A high standard of proof applies whenever committal to prison for contempt is sought because contempt of Court is quasi-criminal in nature and the orders sought have the potential of taking away the liberty of a citizen. 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 essentials here include prove that a person has committed contempt and that the applicant has complied with all the statutory requirements governing the application.

40. 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.

41. It is impermissible to commit an alleged contemnor to jail in the absence 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'* and is

entitled to due process and protection of the law. 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... 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.'*[15]

42. 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, is importantly acting as a guardian of the public interest.[16] Therefore, it is clear that contempt of court is not merely a mechanism for the enforcement of court orders.

43. I now apply the above principles to the facts of this case. *First*, one of the failures cited is "alleged refusal to pay costs" allegedly as ordered by the court. I have already addressed the alleged failure in my earlier determination on the garnishee application. It will suffice to state that paragraph 10 of the order is clear. It expressly provided for the costs to be agreed. This was not done. The alleged document referred to as the agreement is a document signed by the respective advocates who were to benefit from the payment. It is not signed by the party either by themselves or their representative. Secondly, the applicants never lodged their Bill of Costs in court for taxation. There is no certificate of costs or decree to be disobeyed. There was no order to be disobeyed all. This truism disposes this application.

44. *Second*, the same order relied upon does not support the applicants case. Paragraph 3 of the order provided that the cited persons were appointed as interim officials pending elections within 60 days. The order also provided for a Special Annual General Meeting to be held within the sixty days. There is evidence that a meeting was convened and the officials elected. There is uncontested evidence that the applicants were removed from directorship. Sincerely, the applicants' argument is totally misleading and skewed and is not supported by the facts in this case or the order the claim was disobeyed.

45. It follows that there was no order to disobey in the first place. 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*.' A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe him or herself entitled to act in the way claimed to constitute the contempt. In such a case, good faith avoids the infraction. Even refusal to comply that is objectively unreasonable may be *bona fide* (though unreasonableness could evidence lack of good faith.' It is trite that all that the applicant bears onus to prove is that (a) the court order was granted; (b) the respondent has knowledge thereof; and (c) the respondent has failed to comply with the court order. These elements were not proved in this case.

**Final orders.**

46. In view of my analysis and the findings enumerated herein above, the conclusion becomes irresistible that the two applications, namely, the application dated **28th** March 2018 and the application dated **28th** May 2018 have no merits either in law or in substance. Accordingly, I dismiss the two applications with costs to the Respondents in both applications.

47. Orders accordingly. Right of appeal.

**Signed, Dated and Delivered at Nairobi this 26th day of November 2018**

**John M. Mativo**

**Judge**

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[1] *Fidelity Bank Plc vs. Okwuowulu & Anor* (2012) LPELR-8497 (CA).

[2] *Citizens International Bank Ltd. Vs. SCOA Nigeria Ltd. & Anor*. (2006) LPELR-5509(CA).

[3] *Purification Tech (Nig.) Ltd Vs. A. G., Lagos State* (2004) 9 NWLR (Pt. 879) 665

[4] *Citing Kariuki & 2 Others vs Minister for Gender* {2004}eKLR.

[5] Act No. 46 of 2016.

[6] 9th Edition, page 360.

[7] Butterwoths {1996} Pages 555-569.

[8] {2005} 1KLR 828.

[9] {1985} KLR 227.

[10] Nakuru HCCC No No. 194 of 2004

[11] See G. V. Odunga J in Misc App No 268 of 2014 (J.R.)

[12] Eastern Cape Division Case No.  364 of 2005

[13] Ibid, at page 4

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

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

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