



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL & TAX DIVISION**  
**CIVIL SUIT NO. 528 OF 2015**

**PINNACLE (K) TRAVEL AND SAFARIS MITED.....PLAINTIFF**

**VERSUS**

**OMAR FARUK OSMAN.....1ST DEFENDANT**

**MOHAMMED TATAWI**

**ALEXAANDEDRE NIYUNGEKO**

**ANTENEH ARAHAM**

**MAUREEN MUDE**

**JANE UWIMANA (sued as the official of**

**EASTERN AFRICA JOURNALISTS**

**ASSOCIATION (EAJA) .....2ND DEFENDANT**

**RULING**

**[1]** This matter came up on **18 January 2017** for the 1st Defendant to show cause why he should not be committed to civil jail for contempt of Court for failure to comply with the Court's Ruling and orders made herein on **29 November 2016**. That Ruling was in respect of the Notice of Motion dated **2 June 2016** which had been filed by the Plaintiff, **Pinnacle (K) Travel & Safaris Limited** pursuant to **Section 5** of the **Judicature Act, Chapter 8 of the Laws of Kenya, Rules 81.4 and 81.10 of the civil Procedure (Amendment No. 2) Rules, 2012**, of the Senior Courts of England and Wales and County Courts of England and Wales for orders that:

[a] An order of committal be made against **Omar Faruk Osman**, the 1st Defendant, committing him to prison for such a period as this Court may deem fit and just, for disobeying the Orders of this Court made in this suit on **3 May 2016**;

[b] That this court be pleased to order for the personal attendance of the 1st Defendant on the hearing date of this application and on subsequent dates as it may deem fit;

[c] That the costs of this application be borne by the 1st Defendant.

[2] The orders of **3 May 2016** required the 1st Defendant to, *inter alia*, deposit in Court all his 3 passports of Somalia, United Kingdom and African Union; and that a deposit of **Kshs. 1.8 million** be made as security for the satisfaction of the decree that may be passed herein. The Defendant failed to comply, thereby prompting the filing of the aforementioned application.

[3] In his show cause affidavit, sworn on **9 January 2017**, the 1st Defendant averred that the debt that is the subject matter of this suit is a corporate debt owed by the 2nd Defendant for services rendered by the Plaintiff; and that on the **22 December 2016** the current office bearers personally visited the Plaintiff and agreed to have the case marked as settled after paying the Plaintiff the sum claimed of **USD 36,000**. He exhibited an official receipt issued by the Plaintiff as evidence of the payment. He therefore prayed that the orders of **30 December 2015** for his arrest, as well as the stop order issued and registered with the Directorate of Immigration Services in his personal file, be lifted and discharged.

[4] The Plaintiff, in a Replying Affidavit sworn by its Director, **Elizabeth Mbugua**, confirmed the payment of **USD 36,000**, but denied that the payment was in full and final settlement of the claim, and contended that the Plaintiff is still owed over **USD 38,289.02** in interest for 52 months from 2012 together with costs. The Plaintiff therefore urged the Court to maintain the orders in place pending the final determination of this matter.

[5] Granted that this was an application for arrest before judgment, there is no decree that has been passed. Technically, although the sum claimed has been paid, the question of interest, if disputed would have to be tried for a determination on the merits. Accordingly, the 1st Defendant having purged his contempt by causing the Plaintiff to be paid the aforesaid sum, I would find that he has shown sufficient cause as to why he should not be committed to civil jail. Accordingly, the Orders issued herein on **30 October 2015** and **3 May 2016** are hereby discharged. Parties to negotiate the pending issue of interest and costs failing which, to move the court appropriately for a determination on the merits.

Orders accordingly.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JANUARY 2017**

**OLGA SEWE**

**JUDGE**