



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION NO. 342 OF 2016**

**IN THE MATTER OF ARTICLE 22(1), 165, 258 AND 259 OF THE CONSTITUTION OF KENYA,  
2010**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS OR FUNDAMENTAL  
FREEDOMS UNDER ARTICLES 10,27,35(2),40 ,47,50(1) AND 73 (1) OF THE  
CONSTITUTION OF KENYA, 2010.**

**AND**

**IN THE MATTER OF COMMISSIONER OF CUSTOMS & BORDER CONTROLS**

**AND**

**IN THE MATTER OF THE WRONGFUL IMPOUNDMENT AND DETENTION OF  
IMPORTED GOODS UNDER ENTRY NO. 2016MSA 6030784**

**AND**

**IN THE MATTER OF THE EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT ACT,  
2009 AND THE EAST AFRICAN CUSTOMS REGULATIONS, 2010**

**BETWEEN**

**STANDARD RESOURCE GROUP LTD.....PETITIONER/APPLICANT**

**VERSUS**

**ALI BADAWEY.....1<sup>ST</sup> RESPONDENT**

**RICHARD MUTINDA.....2<sup>ND</sup> RESPONDENT**

**DAVID KILLORAN .....3<sup>RD</sup> RESPONDENT**

**JUDGMENT ON CONTEMPT OF COURT**

1. On 2<sup>nd</sup> September 2016 this court delivered a ruling granting conservatory mandatory orders,

ordering the 3<sup>rd</sup> respondent to release the petitioner/applicant's wrongfully impounded goods under Entry No. 2016, MSA 6-30784 to the petitioner free of any warehousing demurrage, port plus VAT and storage charges accrued on the petitioner depositing kshs 20,000,000 twenty million in the form of a reputable bank guarantee deposited with the court and the 3<sup>rd</sup> respondent Commissioner of Customs and Border Controls within 7 days of the ruling.

2. The court also implored on the parties to explore possible alternative dispute resolution mechanisms as espoused in Article 159 of the constitution. The 3<sup>rd</sup> respondent was ordered to bear costs of the application.

3. The said order was extracted and issued on 9<sup>th</sup> September 2016 and it had a penal notice on the face thereof.

4. The affidavit of service sworn by Nixon Muhatia on 10<sup>th</sup> October 2016 shows that on 3<sup>rd</sup> October 2016 he served the order upon Makupa Transit Shades Ltd who were enjoined as interested parties to this petition. The 2<sup>nd</sup> respondent was served on 14<sup>th</sup> September 2016 as per the affidavit of service sworn by the same Nixon Muhatia on 19<sup>th</sup> September 2016.

5. On 17<sup>th</sup> October 2016, the petitioner/applicant's counsel Dr Kamau Kuria filed an application notice seeking to declare and hold that the following people (persons) be held to be in contempt of court for disobeying the court order issued on 9<sup>th</sup> September 2016:

a) Ali Badawy, Richard Mutinda and David Killoran ; and that the said persons be committed to civil jail for a period of six months or any other period that the court may sanction as appropriate. He also prayed for costs.

6. The particulars of contempt as contained in the grounds and supporting affidavit of Mr Wu Jun are that the 3<sup>rd</sup> respondent was ordered to unconditionally release the impounded goods belonging to the applicant. That on 17<sup>th</sup> September 2016 the 3<sup>rd</sup> respondent directed the alleged contemnors who were holding the goods to forthwith release them to the applicant but that the alleged contemnors undermined the authority of the court and refused to release the goods namely the deformed steel bars which had been lying in their customs warehouse since 26<sup>th</sup> May 2016.

7. The applicant therefore urged the court to cite and punish the alleged contemnors for contempt of court and sentence them to a jail term as prescribed in law, maintaining that agents of the principal could be cited for contempt of court if they undermined the authority of the court.

8. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents filed replying affidavits on 2<sup>nd</sup> and 4<sup>th</sup> November 2016 respectively. The affidavits sworn by Ali Badawy deposes that he was a sales person of Makupa Transit Shade Limited and adopted the affidavit of his General Manager Richard Mutinda, while denying that they were in contempt of court at all and that they were only seeking to establish their claim. Further that as a sales person, he was not in a position to make any decisions regarding the release of goods or waiver, which decision could only be made by Board of Directors, not the General Manager or Chief Executive Officer.

9. Richard Mutinda also swore a replying affidavit on 25<sup>th</sup> October 2016 deposing that he is the General Manager of Makupa Transit Shade Ltd and swore the affidavit on his behalf and on behalf of his co-contemnor (alleged), who is the Chief Executive Officer of the Makupa Transit Shades Ltd Mr David Killoran and Mr Ali Badawy.

10. In the affidavit, the deponent denies that Makupa Transit Shades Ltd are agents of Kenya Revenue Authority. That the Makupa Transit Shades Ltd receives instructions to release cargo from the Commissioner of Customs and Border Control but in the manner stipulated in paragraph 5 of the replying affidavit which is the procedure applicable for release of cargo, and not through a court order

and that therefore a court order must comply with the procedures set out in the said paragraph for cargo to be released and on instructions of the Commissioner of Customs and Border Control.

11. That release orders must be obtained from Kenya Revenue Authority and online and that Makupa Transit Shades only participates in verification, drawing gate passes and charging storage.

12. That they had notified the petitioner herein that they could not release cargo without clearance/approval of Commissioner of Customs and Border Controls and only upon proof of payment by the petitioner of the duty due and payable.

13. That in this case, they asked the importer to provide adequate security to enable release of cargo forthwith which is not tantamount to disobeying the court order.

14. That notwithstanding the court order, the release procedures which are internal must be adhered to. That it should not be blamed for contempt of court since it is only an agent and not the principals who are the Commissioner of Customs and Border Control.

15. That as CFS, it acts independent of the Port and Kenya Revenue Authority and the importer enters into a legally binding contract with CFS for the storage of its cargo, which charges accrue after 21 days.

16. That the CFS was never made party to these proceedings and that the issue of storage charges due and the CFS has never been resolved.

17. That it was difficult to release the cargo with unpaid charges because Kenya Revenue Authority had not formally advised Makupa Transit Shades Limited to release the cargo through any acceptable mode until 19<sup>th</sup> September 2016.

18. That the guarantee for 20 million deposited by the petitioner only takes care of additional duty, but not warehousing, demurrage, port charges, marshaling, and remarking which issues are dealt with separately by the importer and the CFS hence it is not proper to assume that the order as issued herein caters for the above.

19. That it is upon the importer to clear with CFS and claim any damages from Kenya Revenue Authority for unlawful detention of its cargo.

20. That all that Makupa Transit Shades demanded was due process to be followed i.e Payment of storage charges and in lieu thereof, a suitable guarantee to be provided by the petitioner as is standard practice, which does not amount to contempt of court; and release to be followed i.e

**i) Valid court order as presented and**

**ii) Release process described above followed.**

21. That if there was any irregular or unlawful act on the part of the Commissioner of Customs and Border Control, it should not be attributed to the Makupa Transit Shades Ltd. That there is no reason why the Commissioner of Customs and Border Control had not been enjoined to the contempt proceedings.

22. That the letter of 27<sup>th</sup> September 2016 by Kenya Revenue Authority to the petitioner's advocates is very telling. That CFS and Makupa Transit Shades Ltd are not agents of Kenya Revenue Authority but independent entities and that the letter dated 29<sup>th</sup> September 2016 was never copied to Makupa Transit Shades Ltd and that total charges as at 27<sup>th</sup> September 2016 were shs 53,011 890. That their letter dated 30<sup>th</sup> September 2016 discusses salient facts of a commercial nature between importer and CFS which cannot be contempt of court.

23. That the first time the alleged contemnors heard of contempt of court was on 3<sup>rd</sup> October 2016 as all correspondence was addressed directly to Kenya Revenue Authority and not copied to the CFS.

24. That legally, contempt application is not available for the aforesaid reasons since there is a separate agreement between the CFS and the importer and unless the procedure for release of cargo is complied with, the court order alone could not compel them to release the cargo to the petitioner.

25. The parties' advocates agreed and orally submitted on the merits and the demerits of the application for contempt, which submissions were quite detailed and as they mirror the depositions in the respective affidavits, I need not replicate them here save to state that the oral submissions were very comprehensive, useful and relevant to this case. They also relied on several authorities.

26. From the detailed submissions and statute and case law cited, the following issues flow for determination:

***a) Whether there was a court order capable of being disobeyed.***

***b) Whether the alleged contemnors were served with order and or whether they were aware of the court order.***

***c) Whether contemnors acted as agents of respondent.***

***d) Whether an agent can be liable in contempt proceedings.***

***e) Whether the alleged contemnors disobeyed the court order of 2<sup>nd</sup> September 2016.***

***f) What orders should this court make and***

***g) Who should bear costs of the application?***

27. I reiterate that on 2<sup>nd</sup> September 2016 this court issued a conservatory order of a mandatory nature directing the 3<sup>rd</sup> respondent Commissioner for Customs and Border Controls to release to the petitioner Standard Resource Group Ltd if wrongfully impounded imported goods under Entry No.2016MSA 6030784 to the petitioner free of any warehousing, demurrage, port plus VAT and storage charges that would have accrued on the petitioner depositing kshs 20,000,000 in the form of a reputable bank guarantee deposited with the court and the 3<sup>rd</sup> respondent within 7 days of this ruling as security pending the hearing and determination of this petition.

28. The above order was extracted on 9<sup>th</sup> September 2016 and served upon the 3<sup>rd</sup> respondent for implementation.

29. The 2<sup>nd</sup> respondent Kenya Revenue Authority and the interested party herein Makupa Transit Shades Ltd were also served with the said order on 14<sup>th</sup> September 2016 and 3<sup>rd</sup> October 2016 respectively and affidavits of service filed in court by the court process server Nixon Muhatia.

30. Upon receiving the orders for release of the cargo, Kenya Revenue Authority wrote to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents clearly indicating that they had no objection to the release of the cargo save that the Makupa Transit Shades, the port container stations (CFS) and any other party in line of the clearance of goods into the country had distinct roles and are not agents of the respondents for purposes of collection of taxes. And that Makupa Transit Shades Ltd is therefore an independent entity distinct from the respondent.

31. The petitioner's advocate wrote several letters as annexed, demanding for the release of the cargo only on conditions given by the court which conditions of bank guarantee his client had fulfilled but

there was serious resistance as shown by the affidavits sworn by Ali Badawy and David Killoran in reply to the contempt application.

32. I have no doubt that there was a valid court order of this court issued against the 3<sup>rd</sup> respondent for release of the cargo upon the petitioner depositing with the court and the 3<sup>rd</sup> respondent a bank guarantee of shs 20 million. There is also no dispute that the respondents and the alleged contemnors hereto were served with the court order in question and were fully aware of the contents of the said court order requiring release of the cargo and this is all reflected in their respective replying affidavits in opposition to the contempt application.

33. Although the 2<sup>nd</sup> and 3<sup>rd</sup> respondents claim that they have no issues with the court order and therefore left it upon the CFS to act upon it as an independent entity distinct from the respondents, it is clear that the Makupa Transit Shades Limited represented by the alleged contemnors hereto was reluctant to release the cargo because of the tax dispute that the petitioner had with the respondents and this is reflected in the Makupa Transit Shades Limited(MTSL) insisting that the procedures for release of the cargo must be adhered to, notwithstanding the court order.

34. Accordingly, I find that there was a valid court order which was not only served upon the alleged contemnors but that the alleged contemnors were too aware of the same, and that is why it engaged the petitioner in correspondence including the letter of 30<sup>th</sup> September 2016 asking for commercial handling charges to be cleared first. MTSL even offered to release the cargo upon the petitioner paying 50% of the amount owing with the balance due upon determination of the matter in order to ease the burden on the petitioner and in the best interest of mitigating further expenses accruing. The letter was signed by David Killoran Chief Executive Officer and one of the alleged contemnors hereto, attaching a pro forma invoice dated the same day.

35. The Makupa Transit Shades Ltd claim that they are independent of Kenya Revenue Authority and the Commissioner of Customs and Border Controls and that as it is not an agent of Kenya Revenue Authority or any of the respondents, it cannot be held to have disobeyed the orders of 2<sup>nd</sup> September 2016 which were addressed to the 3<sup>rd</sup> respondent.

36. The court at paragraph 80 of its ruling made on 2nd September 2016 was clear that the 3<sup>rd</sup> respondent had not indicated to court who the third parties were and or whether those third parties were its agents. It further found that as prima facie, the detention of the goods by the 3<sup>rd</sup> respondent was unjustified, arbitrary and unreasonable, any damages/loss would be attributed to the actions of the 3<sup>rd</sup> respondent.

37. It is not in dispute that there is a dispute as to whether the petitioner owes any more money to the 3<sup>rd</sup> respondent or not following allegations of undervaluation of the goods imported, and that is the main reason why the cargo was detained longer than the stipulated 30 days free storage, until the issue could be resolved but there was no solution on site hence this petition and the application for mandatory conservatory orders which this court considered and granted.

38. This court is also alive to the fact that Kenya Revenue Authority or Commissioner of Customs and Border Control (CC& BC) have no storage facilities for cargo at the Port and that such storage is done by other agencies pending clearance of duty and other charges before cargo can be released to the importers.

39. Furthermore, the storage agencies cannot and would not release the cargo without the authority of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. In my humble view, only a principal has authority over an agent. In this case, the respondents had authority over the Makupa Transit Shades Ltd to hold onto the cargo until all the tax claimed is cleared by the petitioner. However, even assuming that the respondents were not agents of the Kenya Revenue Authority or CC& BC, liability of contempt of a person with notice of the order is described as follows at page 651 of Snell's Principles of Equity, 28<sup>th</sup> Edition;

***“ The court may commit not only the parties enjoined but also directors and officers of any corporate entity enjoined and also any persons who knowingly albeit the parties in their breach of injunction on the ground that they are obstructing the course of justice.”***

40. However, as to whether agents or person not named in the order can be committed for contempt of court, **J.M. Paterson in his 6th Edition of Kerr** on injunctions stated:

***“ The agents, however, of a man against whom an injunction has been awarded, although not named in the order, may be committed for contempt, if having knowledge of the injunction, they act in contravention of the order of the court. Moreover, any person, whether an agent or not, who knowing of an injunction, aids and abets the party enjoined in committing a breach of it, is liable to be committed. In such cases, the committal is not, technically for breach of an injunction but for a contempt of court tending to obstruct the course of justice.***

41. On the basis of the above authoritative writings, I have no hesitation in finding that the alleged contemnors, whether agents of the respondents or not, could be committed for contempt of court if they are found to have by their conduct, tended to obstruct the cause of justice.

42. The next question is whether the alleged contemnors therefore, directly or indirectly and or knowingly by their actions or conduct, tended to obstruct the cause of justice. In **Republic v Attorney General Exparte Evanson Gidraph Kamau Waitiki & Another Mombasa Civil Application 40/2000**, Honourable Muriithi J stated inter alia:

***“ No matter how judicious an order of the court is, if it is not complied with, or implemented, the same remains a worthless paper directive with no practical effect in resolution of the dispute adjudicated by the court.***

***It is now settled law that court orders must be obeyed and as was stated by Romer LJ. In Hadkinson v Hadkinson.***

***“ It is the plain and unqualified obligations of every person against or in respect of whom an order has been 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 even void.”***

43. Section 5 of the Judicature Act ( now repealed by Contempt of Court Act (2016) conferred upon the High Court and the Court of Appeal the power to punish for contempt of court.

44. In this case, the alleged contemnors maintained that they could not release the goods because they were not parties to this petition; that they were querying as to who will pay their storage charges; that they were not agents of Kenya Revenue Authority and that although Kenya Revenue Authority released the cargo, the alleged contemnors were only facilitative of the process for release of the goods as per the affidavit of Mr Mutinda which process of release involves verification that duty is paid and that for Makupa Transit Shades Limited to release cargo it must receive an endorsement on the release order that duty had been paid by virtue of a court order. That in this case, the alleged contemnors had no release order with endorsement by Kenya Revenue Authority, upon which they could issue final invoice and release the cargo.

45. Further, that knowledge of court order does not constitute contempt especially when they were never given an opportunity to be heard; that they are victims of more than one actor, albeit they acknowledged that court orders must be obeyed.

46. As earlier stated, court orders must be obeyed and challenged if there is need to do so. In this case, albeit the alleged contemnors were not primary parties to the petition and therefore were not heard before the orders of 2<sup>nd</sup> September 2016 were made, it is clear that they were in possession of the

cargo subject of these proceedings as bailees and when the order of the court was served upon them, which service and acknowledgement of the order they admit, they started engaging in what they call factual commercial deliberations. They also claim that it was difficult to obey the court order because the Petitioner, knowing very well that the goods were in the custody of Makupa Transit Shades Limited, deliberately omitted the latter from these proceedings and instead crafted an order purposely and issued with the impression that Kenya Revenue Authority charges storage charges.

47. In my humble view, what the alleged contemnors were putting forth in their terse submissions and depositions are their defence as to why they did not obey the court order, yet as at the hearing of these contempt proceedings, they had not sought by way of an application to vary, set aside or review the said court order. And as earlier stated, obedience of a court order is not for parties or agents of parties to the suit or petitioner but for every other person who is expected to facilitate its obedience or implementation. If that were not to be the case, the chain of parties to suits would never end. What also emerges from the alleged contemnor's terse stand is that they were obstructing the cause of justice and tended to so obstruct the cause of justice for reasons that they knew that they were at the tail end of the process of releasing the cargo as per the court order, but were not prepared to obey the court order unless certain conditions in the name of procedures for release of the cargo, were fulfilled.

48. The alleged contemnors' advocate, Mr Akanga in his submissions in opposition to this application for contempt stated as follows on behalf his clients:

***“We are ready and willing to obey the court order. We only need release order in the manner we have asked, irrespective of storage charges and secondly, the court to give directions on storage charges if any should be dealt with.....the court can also give us 48 hours to comply with the orders or to direct Kenya Revenue Authority to issue a release order. There are two giants fighting my client is a victim. A sales man, General Manager and Chief Executive Officer are not seized of capacity to obey court orders. They will lose their jobs if they go to jail. The court can now issue a proper order to Makupa Transit Shades to be obeyed within the next 48 hours and in default, contempt be a recourse.....”***

49. Mr Akanga went on and on to indicate that there was selective justice against his clients as Kenya Revenue Authority had disobeyed the order and so it is the principal contemnor, who should bear the blame up to when they obeyed the order and now that his clients were willing to obey the court order, they should not be found to be in contempt since the proceedings for contempt were meant to execute the court order hence his clients who were law abiding citizens should not be punished through contempt and jail term.

50. The upshot of all the above is that indeed there was disobedience of the court order by the alleged contemnors but that they should not be solely held responsible and that they had very good reasons why they could not obey the court order. There is also very clear and unequivocal admission on the part of the alleged contemnors that they could not obey the court order but on realizing the consequences of such disobedience, they changed tact and heart and stated that they were now willing to obey the court order given 48 hours to do so.

51. I am inclined to agree with submissions by Dr Kamau Kuria that warehouses and their owners exist to facilitate Kenya Revenue Authority to ensure it collects taxes and that the 3<sup>rd</sup> respondent(alleged) contemnor is the alter ego of the Makupa Transit shades Company Ltd hence the one responsible for releasing of the cargo. However, this is the same person who is telling the court that unless certain internal procedures are followed for release of the cargo, which release order is in the terms acceptable to his company the court order must be ignored.

52. The legal principle is that court order must be obeyed by all and sundry and any person who is found to obstruct the implementation of a court order shall be held to be in contempt of court.

53. Where there is difficulty in implementing the court order, the prudent thing to do is to expeditiously

seek the court's intervention and not to take too long like the alleged contemnors herein did only to come to court and start giving defences of why they could not obey the court order including their capacity as employees; their storage charges unpaid; No release order endorsed by Kenya Revenue Authority; they were not heard before the court order was issued and bla bla bla.

54. This country, as correctly submitted by Dr Kamau Kuria, is governed by the rule of law, which is one of the pillars of constitutionalism and good governance, as espoused in Article 10 of the Constitution. Disobeying a court order can never be an option or the last resort.

55. Obedience of court orders can and should never be at the alleged contemnor's terms and conditions. It should be and is unconditional. Our nation is indeed governed by laws and the courts are vested with the judicial authority by the people of Kenya pursuant to Article 159 of the Constitution to declare the law and the obligations of parties and non-parties is to obey that law.

56. In **Spoke V Bankany Board of Health**, Wood VC stated and I agree:

***“The simple and only view is that an order must be obeyed. That those who wish to get rid of that order must do so by the proper cause, an appeal. So long as it exists the order must be obeyed and obeyed to the letter.”***

57. The above view is shared by **J.M. Paterson** in his book the **6<sup>th</sup> Edition** of Kerr on Injunctions wherein he states at page 668.

***“An order for an injunction must be implicitly observed an every diligence must be exercised to obey it the letter. However, erroneously or irregularly obtained, the order must be implicitly observed so long as it exists. A party affected by court cannot disregard it or treat it as a nullity but have it discharged on a proper application.”***

58. In **Stancrub V Trowbrudge UDC**, Warrington J (cited in **Mwaniki Silas Ngari v John S. Akama & Another [2015] e KLR**, it was stated:

***“ If a person or corporation is restrained by injunction from doing a particular act, that person or corporation commits a breach of the injunction, and is liable for a process of contempt, if he or it in fact does the act, and if it is no answer to say that the act was not contumacious in the sense that, in doing it, there was no direct intention to disobey the order.”***

59. From the foregoing, I have no hesitation in finding that the alleged contemnors committed contempt of court orders made on 2<sup>nd</sup> September 2016 by obstructing the execution of the said orders in the sense that knowing that they were the ones holding the cargo subject of the release order, they refused to release the cargo and instead gave various excuses for their refusal to release the cargo. The excuses given are not acceptable defences to obstruction of justice.

60. The three alleged contemnors who are Ali Badawy, Richard Mutinda and David Killoran who are employees of the Makupa Transit Shades Ltd, Mombasa, be and are hereby found to be in contempt of court order made on 2<sup>nd</sup> September 2016 and convicted as such.

61. A person who is found to be in contempt of court order is liable to be punished for and such punishment includes committal to jail for a period not exceeding six months or to a fine or to both fine and imprisonment.

62. In this case, however the court, before according the contemnors an opportunity to mitigate before meting out appropriate sentence as should be, notes that at the end of the hearing of the contempt application on 4<sup>th</sup> November 2016, the contemnors' advocate Mr Akanga made a passionate plea to the court, urging that his clients be accorded an opportunity to purge the contempt in 48 hours. He

stated: inter alia

***“Upto and including now, I reiterate that my client is willing to obey the court order and we were willing to enter a consent when he were last here but there was resistance on the part of the applicant/petitioner.”***

63. The court, after hearing the contempt application and before retiring to write the judgment observed that the order of 2<sup>nd</sup> September 2016 had not been complied with as far as the release of goods were concerned and further, that counsel for the respondents had unwaveringly submitted that his clients were willing to obey the court order. The court noted that the purpose of issuing court orders is for obedience thereof. It therefore accorded the contemnors herein an opportunity to purge the contempt within 5 days by releasing to the petitioner all its cargo without any conditions as to storage charges or otherwise, as those conditions are subject to the main petition being heard and determined on its merits.

64. On 9<sup>th</sup> November when the parties returned to court for mention, it was reported by the petitioner’s counsel Dr Kamau Kuria that the contemnors had purged the contempt without any challenges as his client’s agents were in the process of taking possession of the released cargo. He intimated to court that the minimal delay was caused by Kenya Bureau of Standards who were checking the quality of the cargo.

65. Dr Kamau Kuria also reported that he had consulted Mr Akanga who had confirmed the position and thanked him for assisting the court ensure that the client complied with the orders of 2<sup>nd</sup> September 2016 in favour of the petitioner.

66. On the part of Mr Akanga for the contemnor he urged the court in its ruling hereto to consider that his clients had purged the contempt by complying with the orders of 2<sup>nd</sup> September 2016 at 100%.

67. With the above scenario, which positively reflects on the conduct of the contemnors in purging the contempt which was contempt was essentially admitted in these proceedings but with explanations, I find that this is proper case where the court must exercise its discretion in favour of the contemnor who has demonstrated, however, belated, that court orders are not mere suggestions or opinion or points of view but a directive which must be obeyed and that defiance is not an option.

68. In addition, contempt of court proceedings are not meant to massage the ego of any party to the proceedings nor that of the presiding Judge but to protect and uphold the fundamental supremacy of the law. In this case, it is law that has had its day and not the petitioner or the court.

69. Accordingly, I proceed and discharge the contemnors unconditionally. I order that each party shall to bear their own costs of these contempt proceedings.

Dated, signed and delivered in open court at Nairobi this 28th day of March 2017.

R.E. ABURILI

JUDGE