



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS CIVIL APPLICATION NO. 66 OF 2016**

**IN THE MATTER OF AN APPLICATION ON BEHALF OF H A O AGAINST P L S THE  
DEFENDANT/RESPONDENT FOR CONTEMPT OF COURT EXPARTE**

**RULING**

1. The suit herein was originated by way of a Motion dated 23<sup>rd</sup> May 2016, principally seeking that the respondent be cited for contempt of court with respect to alleged disobedience of orders that had been made by the Nairobi Children's Court in Children's Case No. 1264 of 2013.
2. The respondent in response to that application filed a notice of preliminary objection dated 16<sup>th</sup> November 2016. His principal argument is that the contempt proceedings ought to have been initiated in the children's cause given the provisions of section 10(3) of the Magistrates Courts Act, No. 26 of 2015.
3. It was directed on 17<sup>th</sup> November 2016 that the preliminary objection would be disposed of first, on the basis of written submissions to be filed. The parties complied with the directions by filing their respective affidavits which I have had occasion to read through and to note the arguments advanced therein.
4. Section 10(3) of the Magistrates Courts Act is part of the recent amendments made to the Magistrates Courts Act to clothe the Magistrate's Courts with jurisdiction to punish for contempt of court committed with respect to proceedings conducted by those courts.
5. The relevant provisions of section 10 state as follows:-

*(1) Subject to the provisions of any other law, the Court shall have power to punish for contempt.*

*(2) ...*

*(3) In the case of civil proceedings, the willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court constitutes contempt of court.*

*(4) ...*

*(5) ...*

*(6) The Court may sentence a person who commits an offence under subsection (1) to imprisonment for a term not exceeding five days, or a fine not exceeding one hundred thousand shillings, or both.*

*(7) A person may appeal against an order of the Court made by way of punishment for contempt of*

*court as if it were a conviction and sentence made in exercise of the ordinary original criminal jurisdiction of the Court.* ‘

6. Unlike in the past where the magistrates’ court had no jurisdiction to punish for civil contempt, the kind defined by section 10(3), there is now power to exactly do that. This piece of legislation commenced on 2<sup>nd</sup> January 2016. The suit herein was commenced after that legislation had come into force, and ideally it should have been commenced within Nairobi CMCCC No. 1264 of 2013.

7. Filing the matter within the cause whose orders are the subject of the application would be most suitable for the applicant will not need to prove that the order in question had indeed been made. In any event, that would be the primary court or court of first instance in the circumstances. It would also afford to the respondent an opportunity to have two rights of appeal, to the High Court initially and thereafter to the Court of Appeal.

8. I shall accordingly uphold the Preliminary Objection. This suit should have been filed at the lower court. It is accordingly hereby struck out. Each party to bear their own costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 19<sup>TH</sup> DAY OF MAY, 2017.**

**W. MUSYOKA**

**JUDGE**