



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL MISC. APPL. NO. 74 OF 2016

EUNICE MAKORI & HELLEN MAKONE

**(The administrator and personal representatives of the estate
of JOHNSON ONDUKO MAKORI)APPLICANTS**

- V E R S U S -

MR. TOROME SAITOTI.....1ST RESPONDENT

MR. JOSEPH K. BOINNET2ND RESPONDENT

RULING

1. The subject matter of this ruling is the motion dated 29th June 2017 in which the plaintiffs/applicants sought for the following orders:

1. That the Principal Secretary, Ministry of Defence, Mr. Torome Saitoti the 1st respondent/intended contemnor, be cited for contempt of court for willfully disobeying and failing to comply with the honourable court orders issued on 30th May, 2016 compelling him as the Principal Secretary, Ministry of Defence to pay the ex parte applicants (suing as the administrator and personal representatives of the estate of JOHNSON ONDUKO MAKORI) a sum of kshs.17,257,930/=) being the decretal amount in inclusive of costs and interests to settle the judgments in Nairobi HCC 168 of 2009.

2. The 1st respondent/intended contemnor Mr. Torome Saitoti The Principal Secretary Ministry of Defence, be cited for contempt of valid orders of this court and be committed to jail and to pay such a fine as the court may deem just and fit to impose to meet the ends of justice.

3. The 2nd respondent/contemnor Mr. Joseph K. Boinnet, the Inspector General of Police, be ordered to effect the arrest of the 1st contemnor failure to which he himself be cited for contempt and be committed to jail and pay such a fine as the court may deem just and fit to impose to meet the ends of justice.

4. Such other remedy as this honourable court may deem fit to grant.

5. Costs of the application.

2) The motion is supported by the facts deponed in the supporting affidavit. The motion is exparte in

nature hence it proceeded for hearing ex parte.

3) I have considered the grounds stated on the face of the motion and the facts deponed in the supporting affidavit plus the oral submissions of the applicants' learned counsel. It is the submission of the applicants that on 30.6.2016, Lady Justice Aburili issued an order of mandatory injunction to compel the Principal Secretary, Ministry of Defence to settle the decretal sum of ksh.17,257,930/= in Nairobi H.C.C.C. no. 168 of 2009. It is stated that despite being served with the court order Mr. Torome Saitoti, the Principal Secretary Ministry of Defence has neglected and or refused to settle the decretal sum thus forcing the applicants to take out these contempt proceedings.

4) The respondent have not controverted the averments made by the applicants. I find the applicants' motion to be with merit.

Consequently, the motion is allowed.

5) For the avoidance of doubt the following orders are granted:

i. That Mr. Torome Saitoti the Principal Secretary, Ministry of Defence, the 1st respondent is hereby cited for wilfully disobeying and failing to comply with this court's orders issued on 30th May, 2016 compelling him as the Principal Secretary, Ministry of Defence to pay the applicants (suing as the administrator and personal representatives of the estate of the late JOHNSON ONDUKO MAKORI), a sum of kshs.17,257,930) being the decretal amount in inclusive of costs and interest in Nairobi HCC 168 of 2009.

ii. Mr. Torome Saitoti, the 1st respondent, the principal Secretary Ministry of Defence, be having been cited for contempt is required to appear before this court on 9/11/2017 to submit in mitigation to enable this court to pronounce appropriate sentence.

iii. In view of issuance of Order (ii) above, it is premature to issue the order against the 2nd respondent. Consequently I decline to grant the aforesaid prayer.

Dated, Signed and Delivered in open court this 13th day of October, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent