

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & TAX DIVISION

CIVIL SUIT NO. 51 OF 2017

BANK OF AFRICA KENYA LIMITED.....PLAINTIFF

-VERSUS-

PUT SARAJEVO GENERAL ENGINEERING COMPANY....1ST DEFENDANT

ESED BECIREVIC.....2ND DEFENDANT

ADNAN TERZIC.....3RD DEFENDANT

RULING

[1] This matter came up on **19 December 2017** for the 1st Defendant to show cause why it should not be punished for contempt of Court. In attendance was **Mr. James Muli**, the 1st Defendant's Finance Officer. He had filed an affidavit sworn by him on **14 December 2017** wherein he averred that the 1st Defendant had fully complied with the Court Order of **3 February 2017** by which the 1st Defendant was required to provide a receipt under oath of the schedules of on-going contracts showing the status of completion and outstanding payments and all payments made by the **Kenya National Highway Authority** and **Kenya Rural Roads Authority** between **1 January 2015** and **31 December 2016** within 7 days of the Order of the Court.

[2] It is noteworthy however, that the documents were only supplied after the Ruling of the Court dated **6 December 2017** and in response to the Summons issued herein for the attendance of **Mr. Muli** as well as the Directors of the 1st Defendant. Clearly therefore, the Order of **3 February 2017** was not complied with within 7 days as was stipulated, and no reason has been proffered as to why this was the case. In my careful consideration the attitude of the 1st Defendant is inexcusable. Having found it in contempt, it is hereby fined to pay **Kshs. 200,000/=** within 7 days of the date hereof, failing which execution to issue.

[3] As for **Mr. Muli**, it is notable that he was not a party to this suit, and that on being summoned he complied and availed the requisite documents. In my view he has discharged his obligation. I note that the Plaintiff's Counsel expressed dissatisfaction with the Statements provided in so far as they are not current. However, the Order of **3 February 2017** was specific to the Period between **1 January 2015** and **31 December 2016**. Moreover, it was not a requirement of the Order that the whereabouts of the money or the 1st Defendant's directors be disclosed. Thus, I would agree with **Mr. Nyamodi** that, in so far as **Mr. James Muli** is concerned, there has been compliance and **Mr. Muli** is accordingly discharged of his obligations pertaining to the Summons issued herein on **14 December 2017**.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF DECEMBER 2017

OLGA SEWE

JUDGE