



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**CIVIL CASE NO. 242 OF 2013**

**AFRICA MANAGEMENT COMMUNICATION INTERNATIONAL  
LIMITED.....PLAINTIFF**

**VERSUS**

**JOSEPH MATHENGE MUGO.....1<sup>st</sup>  
DEFENDANT**

**ACCESS BUSINESS MANAGEMENT CONFERENCING INTERNATIONAL  
LTD.....2<sup>nd</sup>DEFENDANT**

**RULING**

1. Before the court is the Plaintiff's Notice of Motion dated 19<sup>th</sup> May, 2014 filed by seeking the following orders;

- a. ***That the Honourable Court be pleased to issue an order for committal to civil jail against the Respondent, Joseph Mathege Mugo and Victoria Cecilia Karanja for a period of 6 months or as the court may direct for disobeying the express orders of the Court issued on the 13<sup>th</sup> of June 2013 and 29<sup>th</sup> August, 2013.***
- b. ***That the costs of this application be in the cause.***

2. The application is based on the grounds set in the application and the affidavit and supplementary affidavit of Philip Phillani Dube, described as the Senior Sales Manager of the Plaintiff, sworn on 19<sup>th</sup> May, 2014 and 5<sup>th</sup> March, 2015 respectively. It was deponed that the pursuant to the orders granted on 13<sup>th</sup> June, 2013, the Respondents herein were ordered to refrain from passing off and carrying themselves to the general public as a sister company or associate company of the Plaintiff and further stop printing any materials or brochures in close resemblance with the Plaintiff's.

3. That the Defendants duly breached the aforesaid order and subsequently the 1<sup>st</sup> Defendant was committed to civil jail for three months. The interim orders were also extended until the hearing and

conclusion of suit.

4. It was the Deponent's assertion that in his ruling, Mabeya J was emphatic that the court put a stop to the holding of the event whose planning and background was being done in breach of a court order. That despite these orders, the Respondent went ahead to organize the event expressly barred by the court on 30<sup>th</sup> October 2013 to 1<sup>st</sup> November 2013 and dubbed as the *Regional Human Resource Summit*.

5. The applicant further stated that the content of the brochures and the partners were also the same as the ones adjudged by this court to have violated the Court Order of 13<sup>th</sup> June, 2013. It was further contended that from the timing and venue of the meeting together with the brochures used, it was clear that the Defendants were carrying out the very event that had already been barred by the court. The Plaintiff urged the court to allow the prayers sought.

6. In reply to the application, the 1<sup>st</sup> Defendant filed his replying affidavit and further replying affidavit sworn on 17<sup>th</sup> September, 2014 and 27<sup>th</sup> November, 2014. It was contended that the instant application was actuated by malice and was an attempt by the Plaintiff to ensure that the Defendants shall never carry out any meaningful business.

7. The Defendants further denied disobeying any court orders since they did not market or organize the alleged event using any brochures and/or branded items that bear any close similarity to those of the Plaintiff. Further, the Defendants contended that the Plaintiff cannot claim to have any goodwill and/or copyright to the works of the defendants if the brochures and or and/or any branded items used do not bear any close similarity to those of the Plaintiff.

8. The Defendants reiterated that the court order in existence did not stop the Defendants from holding any events including but not limited to the alleged event but rather the court ordered that the Defendants not to use brochures and/or any branded items that bear any close similarity to those of the Plaintiff. That the reason the Court cancelled the event scheduled for 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> September, 2013 is because the holding of this particular event had been advertised with brochures closely resembling the Plaintiff's.

9. In addition to this, the Defendants also pointed out that their event, by the name, Regional Human Resource Summit, was advertised in a brochure that was totally different from the Plaintiff's whether in colour, lay-out, print-out or in any other imaginable aspect. In conclusion, it was the defendant's assertion that the whole application was an abuse of court process aimed at pushing the 2<sup>nd</sup> Respondent out of business and urged the court to dismiss the same.

10. The application was argued by way of written submissions. The Applicant filed its submissions on 17<sup>th</sup> November, 2015. The Defendant's submissions were however not on record, even after the court granted them seven days to do so on 19<sup>th</sup> January, 2016 when the matter had come up for highlighting of the written submissions. Having considered the affidavits on record, submissions of the applicant and the cited authorities, the following is my take on the matter.

11. The issue for determination in this application, is primarily whether the Respondents willfully disobeyed the orders of the court made on 13<sup>th</sup> June, 2013. It is quite clear that the Plaintiff herein alleges that the Defendant's willfully disobeyed injunctive orders issued by the court on 13<sup>th</sup> June 2013 that were subsequently extended on 29<sup>th</sup> August, 2013. The law with regard to disobedience of an injunctive order is found in Order 40 rule 3 (1) of the civil Procedure rules and states as follows;

***“In cases of disobedience or breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release”***

12. From the reading of the above provision, I find that it is essential to establish whether the defendants

herein intentionally, by its conduct disobeyed a court order. As it was held in the case of **Augustine Marete Rukunga vs. Agnes Njeri Ndungire & Anor, HCCC 2160** the court was emphatic when it stated that;

***“The consequence of a finding of contempt is penal. The standard of proof is beyond reasonable doubt. The applicant therefore had to prove service beyond reasonable doubt and I must be satisfied that the respondents disobeyed the court order made on the 9th December 1998 and that they did so willfully or intentionally”***

13. In the foregoing, it is trite law that where committal is sought for breach of an injunction, it must be made clear what the defendant is alleged to have done and that it is breached. The application must state exactly what the alleged contemnor has done or omitted to do which constitutes a contempt of court with sufficient particularity to enable him to meet the charge.

14. This was stated in the case of **Gachoni Enterprises Limited v D.N. Nyaga t/a Njeru, Nyaga & Co. Advocates & another [2012] eKLR** where **Odunga J** went on to add that ;

***“The necessary information must be given in the notice itself. The slightest ambiguity to the order can invalidate an application for committal as ambiguity can in turn lead to the standard of proof, which is the criminal standard, not being attained especially on affidavit evidence. Therefore the law is that no order requiring a person to do or abstain from doing any act may be enforced by contempt unless a copy of the order has been served personally and endorsed with a notice informing him that if he disobeys the order he is liable to the process of execution. In other words the Court will only punish for contempt of injunction if satisfied that the terms of the injunction are clear and unambiguous and that the defendant has a proper notice of the terms and the breach of the injunction has been proved beyond reasonable doubt. See Republic vs. Commissioner Of Lands & 12 Others Ex Parte James Kiniya Gachira Alias James Kiniya Gachiri Nairobi HCMA No 149 of 2002 and Jacob Zedekiah Ochino & Another vs. George Aura Okombo & 4 Others Civil Appeal No. 36 of 1989 [1989] KLR 165. (emphasis added)***

15. Bearing the above in mind, I have perused the court record. It is worth noting that the Plaintiff commenced this suit on 12th June, 2013 by way of a Plaint. Together with the Plaint, the Plaintiff filed a Notice of Motion dated the same day under a Certificate of Urgency wherein it sought orders to restrain the 1<sup>st</sup> Defendant from being a director of the Access Business Management Conferencing International Limited for a period of eighteen (18) months from 14th November, 2012 pending the hearing and determination of both the application and suit. In addition, the Plaintiff sought for the Defendants to be restrained from passing off and carrying themselves to the general public as a sister or associate company of the Plaintiff.

16. Upon hearing the Plaintiff ex-parte on 13th June 2013, the Mabeya J made the following orders :-

***“a) THAT the application be and is hereby certified as urgent.***

***b) THAT a temporary injunction be and is hereby issued restraining the defendants from passing off and carrying themselves to the general public as a sister company or associate company of the plaintiff and to further stop printing any materials or brochures in close resemblance with the plaintiffs for 14 days only to avoid any further exposure of the Plaintiff.”***

17. Subsequent orders were issued on 5<sup>th</sup> September, 2013 emanating from the ruling of **Mabeya J** dated 29th day of August, 2013 where it was ordered as follows;

***“4. THAT a temporary injunction restraining the 1<sup>st</sup> defendant from being a director of***

***the 2<sup>nd</sup> Defendant company for the contractually stipulated period of 18<sup>th</sup> months from 14<sup>th</sup> November, 2012 pending the hearing and determination of this suit.”***

18. According to the submissions of the Applicant, the Respondents were aware of the above orders as the same were read in the presence of their counsel. I also note that the Plaintiff successfully argued an application to have the directors of the 2<sup>nd</sup> Defendant Company committed in prison for three months for violating the orders issued by the court on 13<sup>th</sup> June 2013.

19. The plaintiff in its submissions however directed the court to the last paragraph of the ruling by **Mabeya J** on 29<sup>th</sup> August, 2013 where it was stated;

***“Finally, since the event has been planned on the background of a breach of the injunctive order of 13th June, 2013 allowing the same to continue would be to sanction a contempt of court. That won’t do. I am therefore satisfied that sufficient ground for the grant of the temporary injunction has been laid.”***

20. According to the Applicant, this meant that the Defendants could not hold any of the events with regard human resource summit until the hearing and determination of the matter. In my view, the orders issued by the court are far from that. Firstly, a reading of the extracted order dated 5<sup>th</sup> September, 2013 does not contain any such orders.

21. The same only states that the 1<sup>st</sup> Defendant is refrained from being a director of the 2<sup>nd</sup> Defendant company for the contractually stipulated period of 18 months from 14<sup>th</sup> November, 2012 pending the hearing and determination of the suit. Looking at the instant application, the arguments advanced by the Plaintiff are not in regard to the 1<sup>st</sup> Defendant being a director of the 2<sup>nd</sup> Defendant.

22. The allegations primarily deal with an event held on 30<sup>th</sup> October 2013 to November, 2013 organized by the Defendants. But did the court specifically bar the Defendants from holding the event complained of?

23. I have read the holding, **Mabeya J** in the ruling of 29<sup>th</sup> August, 2013. Specifically paragraph 28 to 30, where he stated as follows;

***“28. The question for determination therefore is whether the Plaintiff has fulfilled both the conditions for a passing off claim on a prima facie basis for an injunction to issue. I have considered the affidavits on record and the submissions of counsel. It is not in dispute that the Plaintiff first held the Human Executive Symposium in 2012 and has goodwill to it. I have also seen the exhibits of the Plaintiff, especially “PPD 3” and compared them to those of the Defendants. I have already found that the brochures for both the Plaintiff and the Defendants are similar to the naked eye, even though the same are of a different colour. No doubt the brochures produced by the Defendant can easily confuse members of the public as to the origin of the event. I also find it suspect that the Defendants would choose to call the event “the 2nd executive Human Resources Event” when it has never organized a 1st Human Resources symposium. The Human Resources Symposium of 2012 in Kenya was never held by the alleged Human Resources Boosters but the Plaintiff. In this regard, there is a prima facie basis to believe that 3rd parties dealing with the Defendants may be misled to think that the Defendants and the Plaintiff are linked. There is evidence on record that the 1st Defendant was either in the employ of the Plaintiff or was somehow connected with the Plaintiff when the event was first held in 2012. Then the names of AMC international and ABMC International may be another issue. The said inference for confusion may be drawn from exhibit “PPD7” annexed to the Affidavit in support of the application of the 12th June, 2013 which was an email from a client demanding from the Plaintiff Kshs.139, 000/- which it had paid to the Defendants, thinking that they were the designated agents of the Plaintiff. On this point***

*alone, I find that the Plaintiff has established a prima facie case against the Defendant for passing off, since the elements of such a claim have been established on a prima facie basis.*

*29. As regards the purported rights holder to the event, that is Human Resources Boosters, I find the Defendants line of argument imprudent for the simple fact that if that was the case, the said company would have been a party to these proceedings. At this stage, it is not. That company did not organize the event in 2012. It is not the one organizing the same in 2013. The 2012 event was planned, organized and executed in Kenya by the Plaintiff. The material and brochures used were those prepared by the Plaintiff. I am hesitant to believe the Defendants argument on the issue of intellectual property rights to the event since the traditional common law view that has prevailed is that it is difficult to attach ‘any precise meaning to the phrase “property in a spectacle”. A spectacle in this case refers to an event. A “spectacle” cannot, therefore, be “owned” in any ordinary sense of that word. See the case of Victoria Park Racing –v- Taylor (1937) 58 CLR. It should be noted that Human Resources Boosters has not advanced a claim to the event. That is an issue for trial.*

*30. Finally, since the event has been planned on the background of a breach of the injunctive order of 13th June, 2013 allowing the same to continue would be to sanction a contempt of court. That won’t do. I am therefore satisfied that sufficient ground for the grant of the temporary injunction has been laid.*

*31. The upshot of this is that the Plaintiff’s Notice of Motion dated 16th July 2013 is hereby allowed. I find the 1st Defendant to be guilty of contempt of court of the order made on 13th June, 2013. He is hereby committed to jail for 30 days effective immediately. Victoria Cecilia Karanja is discharged. Prayer 2 of the motion is allowed to last until the hearing and determination of the suit. The Plaintiff shall have the costs of the application.”(underlining mine)*

24. My understanding of the above passages is that the Court ordered that the Defendants should not hold a scheduled event slated for 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> September 2013 , since the same could have easily confused consumers as to the origin of the event. The Applicant complains of event of 30.10.2013 – 1.11.2013.

25. The Brochures used for advertising the said event closely resembled those of the Plaintiff Company as assessed by Mabeya J in paragraph 29 above only served the purpose of confusing the consumers. In the premises, I would have to agree with the Defendants’ assertions that they did not violate any court order as the court only made reference to an upcoming event slated for the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> September, 2013 and not of 30.10.2014 – 1.11.2013. Further to this, the brochures dully attached to the Replying affidavit of Joseph Mathege Thuo in my assessment are not similar to those of the Plaintiffs and are not confusing to the public.

26. Just in case I am wrong on that score , I have examined the subject ruling. I find that in it, **Mabeya J** did not restrain the defendants from further planning or organizing any human resource event when he stated that **“Prayer 2 of the motion is allowed to last until the hearing and determination of the suit.”**. I make this conclusion, having read Prayer 2 of the notice of motion dated 16<sup>th</sup> July, 2013 which as per the record was fashioned as follows;

**“ 2. THAT the Honourable Court be pleased to detain the 1<sup>st</sup> defendant, Joseph Mathege Mugo and the directors of the 2<sup>nd</sup> Defendant company, Victoria Cecelia Karanja and Joseph Mathenge Mugo to civil jail for a period not exceeding six (6) months for disobeying the court order of this Honourable Court issued on the 13<sup>th</sup> June, 2013 and extended on the 28<sup>th</sup> June, 2013 by passing off their 2<sup>nd</sup> Executive Human Resource Symposium, 2013 as being a continuation of the plaintiff’s successful 1<sup>st</sup> Annual Human Resources Symposium 2012.”**

27. It is, accordingly, on this ground that I find that the Notice of Motion dated 19th May 2014 lacks merit and the same is dismissed with orders that , costs be in the cause with .

28. The matter should however be expedited. The parties are hereby directed to comply with order 11 of the civil procedure rules in preparation for hearing within 30 days from this ruling, following which a date for hearing of this matter suit should be given.

**Dated, signed and delivered in court at Nairobi this 11<sup>th</sup> day of March, 2016.**

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**C. KARIUKI**

**JUDGE**