



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW NO. 251 OF 2012**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF  
CERTIORARI AND PROHIBITION**

**AND**

**IN THE MATTER OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE COMPANIES ACT CAP 486 LAWS OF KENYA**

**BETWEEN**

**KENYA NATIONAL CHAMBER OF COMMERCE & INDUSTRY.....APPLICANT**

**VERSUS**

**1. THE REGISTRAR OF COMPANIES}**

**2. KIPRONO KITTONY}**

**3. LABAN ONDITI RAO}.....ALLEGED CONTEMNORS/RESPONDENTS**

**EXPARTE**

**STEPHEN MBUGUA.....THE SUBJECT APPLYING**

**EDWARD KINGS ONYANCHA.....27<sup>TH</sup> INTERESTED PARTY/APPLICANT**

**JUDGMENT ON CONTEMPT OF COURT**

1. This judgment determines the application for contempt of court dated 29th May 2014 filed by Edward Kings Onyancha Maina the 27<sup>th</sup> interested party/applicant. The application is supported by 16 grounds on the face of the application and an affidavit sworn by the applicant on 30<sup>th</sup> May 2014 by the applicant. It is also supported by several annexures.

2. The subject application is anchored on the provisions of Section 3(1), 5(5) and 6 of the Judicature Act Cap 8, Sections 1A, 1B, 3, 3A and 81 of the Civil Procedure Act and all mandatory provisions of enabling

statutes.

3. The main prayers in the application seek that;

1. This court do grant and issue orders to cite and punish the contemnors for contempt of court orders dated /issued on 19<sup>th</sup> June 2012,
2. The nullification of the registration of directors on C 40/73 on 27<sup>th</sup> March 2013 by the 1<sup>st</sup> respondent.
3. the contemnors expunge (sic) their contempt forthwith and restore forthwith the directors registered ante 27<sup>th</sup> March 2013 and or ante 18<sup>th</sup> June 2012 in c40/73 into management of the affairs of the applicant alias Kenya National Chamber of Commerce and Industry.
4. the court do grant and issue orders restituting the directors registered ante 18<sup>th</sup> July 2012 and (or ante on 27<sup>th</sup> March 2013 in file C 40/73 maintained by the Registrar of Companies.
5. this court do issue and grant orders punishing the contempt of the court orders issued/dated 19<sup>th</sup> June 2012 by the contemnors jointly and severally.
6. And finally that costs be paid by the contemnors.

4. The Grounds upon which the application for contempt herein are predicated are that: The contemnors are in naked and contumacious (sic) contempt and or disobedience with impunity of the court orders dated/issued on 19<sup>th</sup> June 2012 which orders have neither been varied nor set aside nor discharged at all so far; that the contemnors are privy to the court proceedings genesis of the grant/issue of the same orders on 19<sup>th</sup> June 2012; That the interested parties have never appealed against leave and stay granted on 19<sup>th</sup> June 2012; That the contemnors are in contempt for registration of the directors of the applicant Kenya National Chamber of Commerce and Industry (KNCCI) on 27<sup>th</sup> March 2013 into file C4073 by the Registrar of Companies as disclosed by the press release on 30<sup>th</sup> May 2014 in the Star Newspaper and the Standard Newspaper depicting Kittony intercession(sic) over Machakos County Branch Chairman and Machakos County Governor wrangles; a letter signed by Dr Samuel Thinguri Waruathé dated 27<sup>th</sup> may 2014 in Limuru Sub branch leadership status; the Star Newspaper on Tuesday May 6 2014; notice of withdrawal under order XXIV of the Civil Procedure Rules dated 5<sup>th</sup> April 2013 attaching copy of resolution passed on 3<sup>rd</sup> April 2013 signed by Kiprono Kittony and Laban Onditi Rao; and the letter dated 27<sup>th</sup> March 2013 in C40/73 Notice of change of advocates from Ms S.N. Gikeria & Associates to Ms Kihara Njuguna & Company Advocates for the applicant; disclosures in the Daily Business dated 25<sup>th</sup> April 2014 to 2<sup>nd</sup> May 2014 RE: “ *The man driving Kenya’s Commercial diplomacy.....Kiprono Kitonny.....*”; March 2014 Mombasa County Branch exhibiting Kiprono Kittony Chamber National Chairman and Ndungu Mureu Mombasa County Chairman; affidavit sworn on 6<sup>th</sup> July 2012 by Laban Onditi Rao and filed into court and its annexures and exhibits, Star Newspaper on Friday 22<sup>nd</sup> June 2012 RE: “ *No end to chamber of commerce wars*” voted Laban Onditi Rao receives his certificate from Bishop Gerishon Njoroge after he was elected Kenya National Chamber of Commerce and Industry vice chairman on Monday; The Stat Newspaper on Tuesday June 2012 Re: Kittony is new Chamber of Commerce Chairman; and many more other disclosures stated by the applicant to demonstrate the alleged contempt of court orders.

5. The applicant urged this court to stand up in defence of its image integrity and protection of court process by punishing the alleged contemnors who are named as the Registrar of Companies, Kiprono Kittony and Laban Onditi Rao.

6. The supporting affidavit reiterated sworn by the applicant reproduced what is contained in the 16 grounds on the face of the Notice of Motion, some of which I have reproduced above, while annexing

among others, the orders of 18<sup>th</sup> June 2012 issued on 19<sup>th</sup> June 2012 and evidence of what the applicant listed in his grounds and supporting affidavit as disclosures which, according to him are evidence of contempt of the said court orders made on 18<sup>th</sup> June 2012 by Honourable Lady Justice Githua.

7. On 5<sup>th</sup> June 2014 the applicant filed a supplementary affidavit annexing ruling in **HCC 253/2009 Nairobi David Githere & 15 Others vs Honourable Walter Nyambati & 3 Others**; directions in the same matter, orders of 20<sup>th</sup> April 2012 in HCC 306/2011 made by Honourable Justice Waweru; order by Honourable Mwera J (as he then was) dated 21<sup>st</sup> March 2011; charge sheet in criminal case No. 1207/2011 wherein Onditi Rao, Simeon Ondiba Nyamanya and others were charged in court in relation to the KNCCI matters and another charge sheet in criminal 20130/09 all of Nairobi; letter of Registrar of Companies dated 2<sup>nd</sup> July 2012; notification of change of directors and secretaries for Kenya National Chamber of Commerce and Industry among other annexures intended to demonstrate that the alleged contemnors were in contempt of court orders made on 18<sup>th</sup> June 2012 and that the elections of officials of Kenya National Chamber of Commerce and Industry and change of registration of officials by the Registrar of Companies was in utter disobedience of the orders of this court hence custodial committal to civil jail will serve as a wakeup call to the contemnors to respect the rule of law and the court and cease taking it in a perpetual vicious cycle.

8. On 9<sup>th</sup> March 2016 the alleged 2<sup>nd</sup> and 3<sup>rd</sup> contemnors/respondents filed a replying affidavit sworn by Kiprono Kittony and Laban Onditi Rao jointly on 8<sup>th</sup> March 2016 annexing among others, proceedings in this matter and vehemently denying that they or at all disobeyed the court order made on 18<sup>th</sup> June 2014. They also annexed judgment by Hon Korir J in JR 169 of 2013 wherein an interested party, one Mr Stephen Mbugua sought for Judicial Review Orders to quash the decision of the Registrar of Companies who is the 1<sup>st</sup> respondent to this application, for registering the 2<sup>nd</sup> and 3<sup>rd</sup> respondents herein as officials of the KNCCI on 27<sup>th</sup> March, 2013 and for an Order of Mandamus compelling the Registrar of Companies to convene an annual General meeting of the KNCCI.

9. In the respondent's view, the orders in question as made on 18<sup>th</sup> June, 2012 and issued on 19<sup>th</sup> June, 2012 were to remain in force only up to 9<sup>th</sup> July 2012 and that when the matter was mentioned in court on 19<sup>th</sup> March 2013 the applicant did not seek for their extension therefore they automatically lapsed. Further, that as per the typed proceedings in this case, on 28<sup>th</sup> March 2013 the applicant without notice to other parties to the suit herein caused the matter to be mentioned before Honourable Korir J with a view to extending the said impugned orders and that the applicant informed the court on the said mentioned date that the orders of 18<sup>th</sup> June, 2012 were not extended by Ougo J which is an acknowledgment that the orders in issue were never in place as at that time. That vide JR 169/2013 Mr Stephen Mbugua sought to quash the decision of the Registrar of Companies on 27<sup>th</sup> March 2013 in registering any Directors of Kenya National Chamber of Commerce and Industry and that in the judgment rendered on 12<sup>th</sup> February 2014, Honourable Korir J held inter alia:

***“ The applicant, however does not deny the fact that there was no order barring the respondent from doing what she did since the stay orders had lapsed.....the applicant herein is aware that the orders were not extended and therefore there are no orders to disobey.”***

10. The respondents further deposed that on 22<sup>nd</sup> May 2014 the applicant herein sought for orders to restrain the registration of the respondents as Directors of Kenya National Chamber of Commerce and Industry and that a similar application dated 26<sup>th</sup> May 2014 was placed before Honourable Hatari Waweru J who directed service upon the respondents. That the aggrieved parties filed an appeal vide CA (App) No. Nairobi 129/2014 which is still pending before the Court of Appeal undetermined. The respondents maintained that there are no orders on record capable of disobedience hence the application for contempt is misconceived and that the said application is a blatant abuse of the court process hence it should be dismissed with costs.

11. The 1<sup>st</sup> respondent Registrar of Companies did not file any replying affidavit opposing the application for contempt.
12. The parties argued the application for contempt of court orally in court on 15<sup>th</sup> March 2016 with the applicant representing himself whereas Mr Munawa advocate represented the 2<sup>nd</sup> and 3<sup>rd</sup> alleged contemnors/respondents.
13. According to the applicant, relying on his replying affidavit and supplementary affidavit and all the annexures, the order breached was made on 18<sup>th</sup> June 2012 by Honourable Githua J and that there has never been any appeal or setting aside of that order. He maintained that the said orders were breached because the 2<sup>nd</sup> and 3<sup>rd</sup> contemnors continue to hold themselves as Chairman and Vice Chairman of the KNCCI and that they have even conceded that fact in their joint replying affidavit filed on 9<sup>th</sup> March 2016. He also submitted that his supplementary affidavit of 4<sup>th</sup> June 2015 bears that evidence of contempt of court order. He stated that none of the contemnors have purged their contempt and that Section 8(5) of the Law Reform Act has not been invoked by the contemnors.
14. On case law, the applicant cited the case of **R V GM Holdings Ltd** where it was held that a Judge cannot vary terms of stay but an aggrieved party has to appeal to a higher tribunal (sic). In this case the applicant contended that there was no appeal. Reliance was also placed on the case of **Cleverhun Ltd V British Tutorial College** where it was held that failure to file a defence is an admission except as to damage. The applicant also relied on a Court of Appeal decision whose citation was not given where it was allegedly held that no court could wish away the rules of court ignobly(sic). He also relied on **Hudginson V Hudginson** where Lord Denning stated that the only means to enforce the order is to punish for contempt.
15. On jurisdiction of the court, the applicant relied on **Owners of Motor Vessel Lilian "S" V Caltex Oil (K) Ltd** and submitted that this court has no jurisdiction to vary the orders given. He also relied on Section 3(1) (5) and 6 of the Judicature Act, Article 2(5) of the Constitution and Order 52 of the Rules of the Supreme Court of England on the court's authority to punish for contempt.
16. The applicant trashed the respondent's replying affidavit as being an abuse of court process and that in any event it confirmed the contempt by challenging the court to enforce the rule of law. The applicant urged the court to invoke Section 6 of the Judicative Act to act in good faith in the interest of justice and grant the orders sought.
17. In opposing the application for contempt of court on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> alleged contemnors, Mr Munawa counsel for the alleged contemnors submitted, relying on his clients' sworn replying affidavit. Mr Munawa maintained that there were no orders in place capable of being disobeyed and that the orders made on 18<sup>th</sup> June 2012 were to last until 9<sup>th</sup> July 2012 as shown by order No. 4 on the face of the order. That he had annexed court proceedings which reveal that the orders were extended severally but that on 19<sup>th</sup> March 2013 when the matter came up, the orders were never extended as the appellant was not in court. That again the matter came up on 28<sup>th</sup> March 2013 and the applicant acknowledged that Ougo J had not extended them and that he was referred to Waweru J for 10<sup>th</sup> April 2013. Further that the judgment in JR 169/2013 by Honourable Korir J confirms that indeed there were no orders in place. That albeit the applicant sought for reinstatement of those orders, they were never reinstated even after he filed an appeal to the Court of Appeal which is still pending. Mr Munawa urged the court to adopt **Lenaola J's holding in HCCA 8/98 Francis Gitonga Macharia v Muiruri Waitthaka** that litigation must come to an end and urged this court to find that this application for contempt is an abuse of the court process and dismiss it with costs.
18. In a brief rejoinder, the applicant submitted that the Case law cited by Mr Munawa advocate were irrelevant. Further that Civil Appeal No, 129/2013 and the judgment of Korir J in JR 169/2013 cannot act as appeals against the ruling of Githua J. Further, that parties cannot purport to give jurisdiction to the court and that the court can only act under Section 8 of the Law Reform Act. He urged the court to strike

out the submissions by Mr Munawa advocate for being an abuse of court process.

## **DETERMINATION**

19. I have carefully considered the applicant's application for contempt of court which is basically a quasi-criminal charge against the respondent's, grounds and supporting as well as supplementary affidavits and the annexures thereto. I have given equal measure of consideration to the serious opposition to the application as contained in the alleged contemnor's replying affidavit. And the oral submissions made by the applicant in person and Mr. Munawa for the 2<sup>nd</sup> and 3<sup>rd</sup> alleged contemnors and the case law cited in support of their rival positions.

20. I must mention that the alleged contemnors did file a preliminary objection dated 14<sup>th</sup> May 2015 to this application which preliminary objection was disposed of by this court vide its ruling delivered on 17<sup>th</sup> December 2015 paving way for this application for contempt of court to proceed to hearing on merit.

21. The power of the High Court to punish for contempt of court is not in doubt. The court draws its jurisdiction from the provisions of Section 5 of the Judicative Act Cap 8 Laws of Kenya which provides that:

***The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice of England and that power shall extend to upholding the authority and dignity of the subordinate court."***

22. The procedure for seeking committal of the contemnor for contempt of a court order is as was spelt out in the case of **Christine Wangari Gachege V Elizabeth Wanjiru Evans and 11 Others (2014) e KLR** where the Court of Appeal made it clear inter alia , that:

***".....the new Civil Procedure Rules (of England) which are now contained in the second supplement to the 2012 white book that no leave is required before bringing an application, like the one before us, for committed for contempt relating to breach of this court's order...."***

23. In other words, it does not require leave of court to be obtained to institute contempt proceedings where the contempt related to a breach of a court order.

24. The application before me claims that this honourable court's orders of 18<sup>th</sup> June 2012 issued on 19<sup>th</sup> June 2012 were breached by the alleged contemnors in that despite the orders restraining the registration of the 2<sup>nd</sup> and 3<sup>rd</sup> alleged contemnors as officials of Kenya National Chamber of Commerce and Industry, the 1<sup>st</sup> respondent/alleged contemnor who is the Registrar of Companies proceeded and registered the 2<sup>nd</sup> and 3<sup>rd</sup> alleged contemnors as Chairman and Vice Chairman of the Kenya National Chamber of Commerce and Industry when the injunctive orders of 18<sup>th</sup> June 2012 were still in force and that neither had the said orders been varied, discharged or appealed against.

25. The applicant contends that the alleged contemnors were aware of the said orders of injunction, they were served with the said orders and that the said orders were in force as at the time they were allegedly disobeyed.

26. On the other hand, the alleged contemnors do admit that orders were issued on 19<sup>th</sup> June 2012 as made on 18<sup>th</sup> June 2012 by Honourable Githua J. However, that despite the said orders being extended severally, they lapsed on 19<sup>th</sup> March, 2013 and that therefore there was no order capable of being disobeyed as at the time the Registrar of Companies effected registration of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents/alleged contemnors as officials of the KNCCI on 27<sup>th</sup> March, 2013. That more evidence of the lapsed orders is found in the judgment of Honourable Korir J in JR 169/2013 and the fact that the applicant even filed an appeal before the Court of Appeal after the court herein declined to reinstate the

lapsed orders, which appeal is said to be pending.

27. The issue for determination is whether there was any order of this court in force as at 27<sup>th</sup> March, 2013 capable of being disobeyed by the alleged contemnors and if so what orders should this court make?

28. The issuance of the injunctive order of 18<sup>th</sup> June 2012 is not in dispute. It is also not in dispute that the order restrained the alleged contemnors from registering/being registered as officials of the Kenya National Chamber of Commerce and Industry by the Registrar of Companies( alleged 1<sup>st</sup> contemnor). What is in dispute is whether the order of 18<sup>th</sup> June 2012 was in force as at the time of the said registration of the 2<sup>nd</sup> and 3<sup>rd</sup> alleged contemnors as Chairman and Vice Chairman of the Kenya National Chamber of Commerce and Industry by the Registrar of Companies ( the alleged 1<sup>st</sup> contemnor). This court has the power to punish for contempt of court in order to uphold the authority and dignity of the court, applying the procedure used by the High Court of Justice in England.

29. The standard of proving that indeed there has been contempt of court orders is much higher than that of proof on a balance of probabilities, and almost but not exactly beyond reasonable doubt since contempt of court is a quasi criminal proceeding. The burden of proving that there was contempt of court orders lies on the person alleging that there has been such disobedience of court orders and in this case, it is upon the applicant to prove contempt of court orders of 18<sup>th</sup> June, 2012 by the respondents/alleged contemnors.

30. In **Ochiro & Others V Okombo & Others [1989] KLR 165** the Court of Appeal at page 167 stated that:

***“ The power to deal with contempt of court is provided for under Section 5 of the Judicative Act Cap 8 and Order 39 Rules 2 (3) of the Civil Procedure Rules.....the standard of proof in contempt proceedings must be higher than proof on a balance of probabilities, almost but not exactly beyond reasonable doubt. Another fundamental process in the contempt of court application is that the applicant must prove that the order in question was either served personally on the alleged contemnors or that the alleged contemnors had knowledge of the order and that despite such service or knowledge, the party sought to be cited and committed has disobeyed the order. This requirement finds support in the case of Basil Criticos V AG & Others (2012) e KLR where the court stated that:***

***“.....the law has changed and as it stands today knowledge super cedes personal service.....where a party clearly acts and shows that he had knowledge of a court order, the strict requirement that personal service must be proved is rendered unnecessary.”***

31. In the instant case, the respondents do not deny being served with the order of injunction. They also do not deny being aware of the order made on 18<sup>th</sup> June 2012 hence I shall not belabour that point. However, they contend that although the order existed for a while and was extended several times, there was no breach of the said order and that at the time the 2<sup>nd</sup> and 3<sup>rd</sup> alleged contemnors/respondents were registered as officials of Kenya National Chamber of Commerce and Industry by the 1<sup>st</sup> respondent Registrar of Companies, the order of 18<sup>th</sup> June, 2012 had lapsed and that the said lapse had been acknowledged by several judges in their subsequent decisions whenever this matter or related matter was being considered post 19<sup>th</sup> March, 2013 as is detailed in this judgment.

32. I must therefore determine whether indeed the order of 18<sup>th</sup> June 2012 had lapsed and therefore incapable of being breached as at the time it is alleged to have been breached. I can only do so by meticulously examining the court record herein.

33. When the impugned orders were made on 18<sup>th</sup> June 2012, the court made it clear that the orders were to remain in force until 9<sup>th</sup> July 2012 when the case would be mentioned for directions.

34. The said orders were later extended on 9<sup>th</sup> July 2012 to 25<sup>th</sup> July 2012. On 25<sup>th</sup> July 2012, the orders were extended to 3<sup>rd</sup> October 2012. On 3<sup>rd</sup> October 2012 the orders were extended to 30<sup>th</sup> October 2012. On 30 October 2012 the orders were extended to 20<sup>th</sup> November 2012. On 20<sup>th</sup> November 2012 the orders were extended to 21<sup>st</sup> November 2012 the following day. On 21<sup>st</sup> November 2012 the orders were extended to 23<sup>rd</sup> November 2012. On 23<sup>rd</sup> November 2012 the orders were extended to 14<sup>th</sup> December 2012 on 14<sup>th</sup> December 2012 the said orders were extended to 19<sup>th</sup> December 2012. On the latter date, the orders were extended to the following day on the 20<sup>th</sup> December 2012. On 20<sup>th</sup> December 2012 the orders were extended to 17<sup>th</sup> January 2013 by Honourable Waweru J. On 17<sup>th</sup> January 2013 the orders were extended until 12<sup>th</sup> March 2013. On 12<sup>th</sup> March 2013 the matter came up before Honourable Ougo J who extended the orders to 19<sup>th</sup> March 2013. On 19<sup>th</sup> March, 2013, Hon Ougo J directed that the matter be mentioned before justice Waweru on 10<sup>th</sup> April 2013 for directions. This was after the applicant herein urged that the matter be handled by H. Waweru J for consistency since he was handling two other similar matters. There is no mention of those interim orders being extended. Then on 28<sup>th</sup> March 2013 the applicant herein Mr Edward Kings Maina appeared before Honourable Korir J and submitted that the orders were not extended by Ougo J. The applicant sought the court's directions and Honourable Korir J directed that the applicant who was the 28<sup>th</sup> interested party do appear before HPG Waweru J on 10<sup>th</sup> April 2013 for directions.

35. From that date of 10<sup>th</sup> April 2013, it was not until 15<sup>th</sup> May 2014 one year and one day that the matter came up next before the registry to fix the matter for mention on 22<sup>nd</sup> May 2014 and on 22<sup>nd</sup> May 2014 Honourable Korir J directed that the application dated 21<sup>st</sup> May 2014 be placed before the Duty Judge the same day and the duty judge who was Honourable Ougo J certified the application dated 21<sup>st</sup> May 2014 as urgent, declined to make any ex parte orders and directed the applicant to take dates for the inter partes hearing of the said application in the registry. It is worth mentioning that the application dated 21<sup>st</sup> May 2014 sought for orders for stay of the registration of officials of Kenya National Chamber of Commerce and Industry among others, and 2<sup>nd</sup> and 3<sup>rd</sup> respondents hereto.

36. The court record shows that after the events of 19<sup>th</sup> March, 2013, there is absolutely no evidence that the orders of 18<sup>th</sup> June 2012 were ever extended. This is further fortified by the applicant's efforts of 21<sup>st</sup> May 2014 wherein the applicant frantically sought to stay registration of the 2<sup>nd</sup> and 3<sup>rd</sup> alleged contemnors as official of the KNCCI. That being the case, those orders of 18<sup>th</sup> June, 2012 had no doubt lapsed and that is why the applicant was making efforts to have them reinstated lapsed. However, on 30<sup>th</sup> May 2014 the applicant herein filed this application for contempt of court against the respondents alleging that they had breached the orders of 18<sup>th</sup> June 2012.

37. A perusal of the record shows that on 5<sup>th</sup> July 2012, which was after the issuance of the orders of 18<sup>th</sup> June, 2012 the Assistant Registrar of Companies Mr Wilson Rading wrote to Bishop Gerishon Njoroge the Vice Chairman of the Independent Electoral Board for the election of Directors of Kenya National Chamber of Commerce and Industry informing the Registrar that since there was an order dated 18<sup>th</sup> June 2012 restraining the Registrar from acting on **the 'attached returns,'** the Registrar would await the determination of the matter to enable them proceed. To my mind, that cannot be the kind of Registrar who would have disobeyed the orders of this court, had the said orders been in force at the time the registration of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents as officials of the Kenya National Chamber of Commerce and Industry was affected by the 1<sup>st</sup> respondent Registrar. In other words, there is no evidence of an attempt or intention by the Registrar of Companies to flout the orders of this Court made on 18<sup>th</sup> June, 2012.

38. The applicant herein, it is noted, though not a party to JR 169 of 2013 challenging the registration of the officials of Kenya National Chamber of Commerce and Industry by the Registrar of Companies, That case was which was determined on 21<sup>st</sup> February 2014 by Hon Mr Korir J and in that judgment the learned judge correctly found that the question would be whether the applicant therein who was

also affected by the orders of 18<sup>th</sup> June, 2012 had directed his firepower at the treatment he was given by the respondent in that JR matter. The learned judge made a conclusive finding that the applicant Stephen Mbugua a fellow member of KNCCI as per the minutes of 2.5.2012 attached to the initial application for prohibitory orders giving rise to the orders of 18<sup>th</sup> June, 2012, never denied that there was no order barring the respondent from doing what she did since the stay orders had lapsed. The learned Korir J also found that the applicant appeared to be blaming Justice Ougo for 'inadvertently' failing to extend the stay orders. The learned Judge concluded that there was nothing irrational or illegal in the action taken by the Registrar of Companies in registering the elected officials of Kenya National Chamber of Commerce and Industry as per the returns filed by the Elections Board and moreso, since it was not disputed, there was no order barring her (the Registrar from doing so at the time she registered the officials of the chamber.

39. This court from the judgment in HC JR 169/2013 rendered on 21<sup>st</sup> February 2014 has discovered although Mr Mbugua was challenging the registration of the alleged contemnors herein as officials of the Chamber, in essence, he was complaining that there were orders of 18<sup>th</sup> June 2012 in place when the registration took place therefore that registration of 27/3/2013 should be quashed.

40. In my humble view, therefore, there was a clear nexus between the JR 169/2013 and this case which was pending when the JR matter was filed and the initiator of JR 169/2013 was a member of KNCCI just like the applicant herein.

41. I have taken the liberty to provide a chronology of the events in this matter and from the court record, the matter came up on 28<sup>th</sup> March 2013 before Honourable Korir J who stated that “ **the orders were not extended by Ougo J** . Thus, as at that date of 28<sup>th</sup> March 2013, the registration or alleged contempt had been committed on 27<sup>th</sup> March 2013, the previous day. The matter had been before Ougo J on 19<sup>th</sup> March 2013 when no orders were extended. The interim orders which had been extended on 12<sup>th</sup> March 2013 until 19<sup>th</sup> March 2013 therefore lapsed on 19<sup>th</sup> March 2013 since they were never extended.

42. To the dismay of this court, Mr Stephen Mburu who was also an interested party in this matter and member of the KNCCI and who was equally aggrieved by the no extension of the orders of 18<sup>th</sup> June, 2012 did on 20<sup>th</sup> May 2013, file a Judicial Review case No. 169/2013 challenging the registration of the respondents as directors/officials of Kenya National Chamber of Commerce and Industry which had taken place on 27<sup>th</sup> March 2013.

43. And while those JR 169/2013 proceedings were pending, the applicant herein went quiet. He never complained that the respondents were in contempt of court. He waited until after Honourable Korir J had delivered his judgment in JR 169/2013 on 21<sup>st</sup> February 2014 is when the applicant by his application dated 29<sup>th</sup> May 2013 filed this application for contempt. In other words, the applicant was approaching this court from all angles not only as an individual but through proxy. In my view, the applicant cannot persuade this court and he has not attempted to persuade me that he was not aware of the JR 169/2013 proceedings. Mr Stephen Mbugua who filed that JR matter is a party to this matter with the same interests as those of the applicant herein. Those JR proceedings and the proceedings in this matter were seeking to achieve only one result that is, to vacate the registration of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents as Chairman and Vice Chairman of KNCCI which registration took place on 27<sup>th</sup> March 2013 after the orders of 18<sup>th</sup> June, 2012 had lapsed on 19<sup>th</sup> march, 2013.

44. In the view of this court, the applicant has blatantly abused the process of this court. The matter of registration of officials of Kenya National Chamber of Commerce and Industry was conclusively dealt with by Honourable Korir J in JR 169/2013 and the applicant herein, assuming he was not aware of those proceedings since he was not a party thereto, had the opportunity of reading that judgment which is annexed to the replying affidavit of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to this application/contempt proceedings. The Learned Judge made a finding which has not been challenged, that there was no

dispute that there was no order of 18<sup>th</sup> June 2012 in place when the registration of 27<sup>th</sup> March 2013 took place and that therefore there was no illegality or irrationality proved on the part of the Registrar of Companies. How then would the applicant after receiving such a judgment insist on proceeding with this contempt proceeding against the Alleged contemnors and claim that the orders of 18<sup>th</sup> June 2012 were brazenly breached by the respondents and expect a favourable finding?

45. This court notes that this matter was placed before me after the judges who handled it initially quietly and politely declined to entertain it. I have examined the record very meticulously and I can do no more than sympathize with the applicant who acts in person without the benefit of legal counsel. I believe that is the reason why he sees and hears no evil in doing what he is doing- to himself- being a litigant forever and thereby abusing the court process. I can only attribute that problem to lack of legal advice and legal representation and counsel. The applicant appears to be spending so much of his time and resources in this matter. In my view, he is literally walking in darkness hoping to find light at the end of the tunnel. If there was light, I would not hesitate to accord him appropriate orders. However, I have not found any evidence to show that the respondents have been in contempt of orders of this court made on 18<sup>th</sup> June 2016. I would therefore have no jurisdiction to cite and punish innocent human beings for that would be an abuse of the powers and authority of the people of Kenya conferred on me under Article 159 of the Constitution. No court of law ought to do an injustice. Courts exist only to do justice to the parties. That power to render justice is derived from the People of Kenya. To do an injustice would be acting in violation of the Constitution.

46. In the end, I find that there was no order of 18<sup>th</sup> June 2012 in place as at 27<sup>th</sup> March 2013 when the 2<sup>nd</sup> and 3<sup>rd</sup> respondents were registered by the 1<sup>st</sup> respondent Registrar of Companies. I find that there was no order capable of being disobeyed since it had lapsed on 19<sup>th</sup> March 2013. Therefore, the respondents /alleged contemnors are not in contempt of any court order. They are all hereby found not guilty of any contempt and are acquitted of the charges of contempt of court leveled against them.

47. Accordingly, I dismiss the applicant's application dated 29<sup>th</sup> May 2014 with costs to the respondents.

Dated, signed and delivered in open court at Nairobi this 28<sup>th</sup> day of April 2016.

R.E. ABURILI

JUDGE

**In the presence of**

Mr Edward Kings Maina Applicant in person

Mr Munawa advocate for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents contemnors

CA: Henry