REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

MISCELLANEOUS APPLICATION NO. 105 OF 2014

IN THE MATTER OF: AN APPLICATION BY THE EX-PARTE APPLICANT; UGANDA PENTECOSTAL

UNIVERSITY FOR AN ORDER OF COMMITTAL TO CIVIL JAIL FOR CONTEMPT OF COURT.

AND

IN THE MATTER OF: DISOBEDIENCE OF ORDERS ISSUED ON 30TH OCTOBER, 2014

BY HONOURABLE MR. JUSTICE KORIR BY DIRECTOR/CHIEF EXECUTIVE & SECRETARY

KENYA SCHOOL LAW BOARD AND THE SECRETARY COUNCIL OF LEGAL EDUCATION

AND

REPUBLIC.....APPLICANT

VERSUS

COUNCIL OF LEGAL EDUCATION.....1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

EX-PARTE: - UGANDA PENTECOSTAL UNIVERSITY

RULING

Introduction

1. By his decision dated 30th October, 2014, **Hon. Mr Justice Korir** found that the Applicant herein was entitled to a hearing before the decision which adversely affected it was made. That action, the Learned Judge found was contrary to the rules of natural justice. Accordingly, the Learned Judge issued an order of certiorari quashing the 1st Respondent's decision. By the said decision the 1st Respondent suspended the recognition of the Applicant and made a determination not to accept for training for the bar at the Kenya School of Law, graduates from the Applicant's institution until the issues it identified were not

adequately dealt with were addressed. However, the learned Judge declined to prohibit the 1st Respondent from non-recognition of the Applicant's Bachelor of Laws Degree in Kenya since in his view having quashed the impugned decision such an order was not only superfluous but was also aimed at curtailing the exercise of the Respondents' statutory mandate.

2. It is the said decision which has given rise to the proceedings the subject of these proceedings in which the Applicant seeks the following orders:

> 1. **That this Honourable Court be pleased to certify this Application urgent, be heard Ex-Parte in the first and given the earliest inter-partes hearing date.**
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> 2. **That this Honourable Court be pleased to order the 1st Respondent's Secretary and the Director/Chief Executive & Secretary Kenya School of Law be committed to civil jail for six months for contempt for disobedience of the Court Decree Orders issued on 30.10.2014 by Hon. Mr. Justice Korir, sitting in the High Court of Kenya at Nairobi, in Judicial Review Miscellaneous Application No. 105 of 2014.**
>
> 3. **That the 1st Respondent's Secretary and the Director/Chief Executive & Secretary Kenya School of Law do pay costs of this Application.**

Applicant's Case

3. According to the Applicant, despite the Applicant's former students having been admitted at the School and each having been required to present themselves for interview and having done so, the 2nd Respondent dismissed them by indicating that their admission letters to the school were sent to them by mistake and ought not to have gone for interview. It was the Applicant's view that it is clear that the Respondents are not ready and willing to absorb the Applicant's former students into the School for the Advocates Training Programme hence the Respondents have continued to ignore and or neglect the said order for no apparent reason.

4. To the Applicant the Respondents have openly exhibited blatant discrimination against the Applicant's former students who studied for Bachelor of Laws degree programme and though they were admitted late, the Respondents have refused to register them and allocate them classes.

5. It was disclosed that the Decree issued by this Honourable Court on 30th October, 2014 in this matter with a notice of penal consequences attached thereto, was served on 31st October, 2014 personally upon the 1st Respondent's Secretary by **Mr. Steven Nzaku, Advocate** who directed his office secretary to stamp the same with the official stamp of the council. However, since the service of the said Court Decree, the 1st Respondent Secretary has continued writing letters to the Vice Chancellor of the Applicant herein, **Prof. John Ntambirweki**, in disregard of the Decree issued by this Honourable Court, without following the laid down procedures and regulation under the law. It was disclosed that it was not until 19th February, 2015 and after the filing of the instant application for contempt that some former students of the ex-parte applicant were admitted at the Kenya School of Law, while the majority of those informed of not being qualified, were rejected on the ground that they ought not to have studied at the university in the first instance.

6. According to the Applicant the reasons given by the Director of the School for unsuccessful applications thereto of the *ex-parte* applicant's former student's were unfound because the findings are based on an obsolete piece of Statutory Instrument being; ***The University and other Tertiary Institutes (Minimum Entry Requirements) Regulations, 2007*** instead of regulation 9 of ***The Universities and Other Tertiary Institutions (Quality Assurance) Regulations, 2008*.**

7. It was averred that on 10th September, 2009 the Government of Kenya through its office, Kenya High Commission-Kampala, wrote a letter *inter alia* to all Universities in Uganda detailing the requirements for admission of Kenyan students into Uganda institutions and recognition in Kenya of certificates

awarded by instructions of higher learning in the Republic of Uganda, which letter is an assurance of the obligation of the state and which every concerned public officer should honour.

8. It was therefore contended that the Director of the School and the 1st Respondent's Secretary are relying on irrelevant ground to deny admission to the former students of the ex-parte applicants who have complied with the requirements both under the ***Kenya School of Law Act, 2012*** and ***The Universities and Other Tertiary Institutions (Quality Assurance) Regulations, 2008*** and in disobedience of a decree of this Honourable Court. To the Applicant, the Director of the School and 1st Respondent's Secretary's actions of ignoring, neglecting, failure and disobedience of this Honourable Court's Decree of 30th October, 2014 for no apparent reason has prompted the filing of this current application for committal to civil jail in order to conserve, maintain and uphold the dignity of this Honourable Court.

9. It was added that despite the decree issued by the **Hon. Justice Korir** on 30th October, 2014 and the pendency of the application for contempt of court herein, the Secretary/Chief Executive officer, Council of Legal Education has continued to blatantly ignore the said Court Decree by advertising the names of institutions which in his view have the legal status mentioned in the corresponding column and notifying the public that any institution purporting to provide legal education which was not thereunder mentioned had no legal standing with the Council of Legal education and is therefore not authorized to provide to provide legal education in Kenya.

10. As the *ex-parte* Applicant has never been issued with the notice dated 19th March, 2013 as alleged in the newspaper advertising, it was contended that the information beyond being a disobedient of the courts' decree herein is actuated by malice and focused into bringing down the ex-parte Applicant. It was the Applicant's view that there is serious institutional administrative lapses in respect to the 1st Respondent and indeed presents a mixed grill in that, that it concerns itself with matter beyond its jurisdiction by purporting to recognise and accredit a foreign institution and in particular the *ex-parte* Applicant and at the same time an seeking to recognize, equate and approve individual applicant legal qualification for a bar course from a foreign institution all contained in one advertisement.

11. It was submitted on behalf of the Applicant that any person who disobeys a court order whether a party to the proceedings or not is culpable of contempt hence the Director of the School having been served with decree ought to have acted appropriately. In support of this submission the Applicant relied on **Kenya Tea Growers Association vs. Francis Atwoli & 5 Others [2012] eKLR** where it was held:

> **'in the case before me, I am more than satisfied that even at higher level beyond reasonable doubt, when an individual has been served with and/or has knowledge of a court order but not only ignores it but in fact incites others to do the same, the threshold for contempt has been met."**

12. In this case, it was submitted that since the Respondents were served and were aware of the order, there is no excuse for their failure to comply therewith. The Applicant also relied on **Republic vs. Kenya School of Law & 2 Others exp Juliet Wanjiru Njoroge & 5 Others [2015] eKLR**.

Respondents' Case

13. In opposing the application the Director/Chief Executive & Secretary Kenya School contended that neither the Kenya School of Law's Board nor the Director/Chief Executive & Secretary Kenya School of Law (hereinafter referred to as "the School") were parties to the instant matter and that the leave which was granted herein was against the Council of Legal Education, which is a different entity.

14. It was however averred that following the delivery of the decision which gave rise to these proceedings, the 1st Respondent commenced the process of confirmations with the ex parte Applicant under the law and pursuant to the guidance of the judgement before making determinations on the recognition or otherwise of the degree qualifications from the *ex parte* Applicant's institutions. It was averred that the School's Board still defers to the Council for Legal Education, the 1st Respondent on

matters of qualification and is bound by the decisions of the 1st Respondent.

15. According to the School, before the completion of the assessment for recognition of LLB degree of the Applicant by the 1st Respondent, students from the ex parte Applicant applied for the enrolment to the Advocates Training Programme (hereinafter referred to as "the Programme") for the academic year 2015. Following the Court's decision, the School interpreted the order to mean that the position ante the quashed decision applied and the applications were thus received and processed in accordance with the School's jurisdiction under the ***Kenya School of Law Act, 2012*** and decision therefor communicated to the said applicants in writing admitting those who complied with the criteria for admission and declined those who had not complied with reasons therefor.

16. Before making the decision the School's Board confirmed with the 1st Respondent the position of the *ex parte* Applicant's LLB degrees and when informed that the process was underway the School proceeded with determination of the admission process. It was disclosed that despite their applications having been received after deadline, the same were duly received and determined and they were offered provisional admission.

17. It was contended that contrary to the allegations by the *ex parte* Applicant, the students duly attended the interviews and due administration was done save for those students who were subject to JR Misc. Appl. No. 58 of 2014 and who had sought refund of their fees and had not freshly applied. It was therefore contended that the School received applications from the *ex parte* Applicant and, duly considered the same hence the issue of frustration and disobedience of the Court order are grossly untrue.

18. According to the School, the application is incompetent as the School and its director were not parties to the Judicial Review proceedings and no leave was sought against them; that no order was issued against the School and or its Director which has been disobeyed to warrant institution of contempt of Court proceedings; that the School has in the exercise of its discretion under the law determined the applications and no challenge has been taken to the said determinations; that as the matters relate to grievances by the former students of the *ex parte* Applicant, the *ex parte* Applicant has no standing to bring these proceedings.

19. On behalf of the 1st Respondent, it was contended that following the delivery of the Judgement herein, the 1st Respondent several times wrote to the *ex parte* Applicant following up on the state of compliance by the ex parte Applicant of the deficiencies noted at the *ex parte* Applicant's institution following the physical inspection carried out in a report forwarded to the *ex parte* Applicant in accordance with the 1st Respondent's jurisdiction under the ***Legal Education Act, 2012*** and the ***Council of Legal Education (Accreditation of Legal Education Institutions) Regulations, 2009***.

20. However, the *ex parte* Applicant ignored and neglected to respond, acknowledge and act thereon. It was averred that the admission of the graduates from the *ex parte* applicant at the School in 2015 is testament that indeed the order of this Court has been given deference and attests and confirms the actual position that until and unless the 1st Respondent makes any further decision on the status of the recognition of LLB degrees from the ex parte applicant, the substance of the Court order overrides earlier suspension. It was therefore averred that the substance of this application is premised on inaccurate factual background.

21. The 1st Respondent associated itself with the position taken by the School that the application is on the same grounds incompetent.

22. It was submitted on behalf of the Respondents that following the judgement the applications from the students from the *ex parte* Applicant were considered and none of them was declined on the ground that they were from the *ex parte* Applicant hence all the matters pertaining to the said applications were addressed and decision made thereon in compliance with the Court order and in accordance with the threshold of the law in ***Kenya School of Law Act, 2012***.

23. It was therefore submitted that after compliance with the Court order, when the School determined the applications by the students from the *ex parte* Applicant, the tenor of the present application stood determined as the recognition of degrees of the *ex parte* Applicant stood reinstated pursuant to the Court order. Therefore any other enterprise that the 1st Respondent has done on the issue of recognition of qualifications in law from the ex parte Applicant is a separate issue, separate considerations, separate decision and cannot be determined in the context of the present application.

Determinations

24. I have considered the Application the subject of this ruling, the affidavits in support of and in opposition thereto, the submissions and the authorities relied upon herein and this is the view I form of the matter.

25. According to ***Black's Law Dictionary***, 9th Edition at page 360:

> **"Contempt is a disregard of, disobedience to, the rules or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behaviour or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body."**

26. In ***Halsbury's Laws of England*, 4th Edition Volume 9 at paragraph 52** it is stated:

> **"It is a civil contempt of court to refuse or neglect to do an act required by a Judgment or order of the court within the time specified in the judgment or order…A judgment or order against a corporate body may be enforced by an order of committal against the directors or other officers of the corporation."**

27. It was contended that since the School and its Director were not parties to the original proceedings for judicial review, they cannot be found to be in contempt of the Court. Further as no leave to institute contempt proceedings was sought against them these proceedings are incompetent. At this stage, it is important to revisit the procedural legal provisions guiding the process of committal in this Country. The first port of call with respect to the procedure for institution contempt of Court proceedings in this country is section 5 of the ***Judicature Act*** Cap 8 Laws of Kenya. That section provides:

> ***(1) 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 in England, and that power shall extend to upholding the authority and dignity of subordinate courts.***
>
> ***(2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.***

28. Therefore the law that governs contempt of court proceedings is the English law applicable in England at the time the contempt was committed. The procedure in the High Court of Justice in England was considered in detail by the Court of Appeal in **Christine Wangari Gachege vs. Elizabeth Wanjiru Evans & 11 Others [2014] eKLR**. In that case the Court recognised that the only statutory basis for contempt of court law in so far as the Court of Appeal and the High Court are concerned is section 5 of the ***Judicature Act***.

29. The High Court of Justice in England comprises three (3) divisions – the Chancery, the Queens Bench and the Family Divisions. It is true that following the implementation of **Lord Woolf's** "***Access to Justice Report, 1996***", the ***Rules of the Supreme Court*** of England are being replaced with the ***Civil Procedure Rules, 1999*** and pursuant thereto the Court of Appeal in the above decision recognised that on 1st October, 2012 the ***Civil Procedure (Amendment No. 2) Rules***, 2012, came into force and Part 81 thereof effectively replaced Order 52 of the ***Rules of the Supreme Court*** which was the Order dealing

with the procedure for seeking contempt of Court orders in the High Court of Justice in England, in its entirety. Under Rule 81.4 which deals with breach of judgement, order or undertaking, referred to as "application notice", the application is made in the proceedings in which the judgement or order was made or undertaking given and the application is required to set out fully the grounds on which the committal application is made, identify separately and numerically, each alleged act of contempt and be supported by affidavit(s) containing all the evidence relied upon. The said application and affidavit(s) must be served personally on the respondent unless the Court dispenses with the same if it considers it just to do so or authorises an alternative mode of service. The Court of Appeal held that leave or permission is nolonger required in such proceedings (relating to a breach of a judgement, order or undertaking) as opposed to committal for interference with the due administration of justice or in committal for making a false statement of Truth or disclosure statement.

30. It follows that these proceedings cannot and are not rendered incompetent simply because no leave was sought and obtained against the contemnors herein.

31. The next issue is whether contempt orders can be issued against persons who are not parties to the proceedings. The general rule is that a non-party to legal proceedings is not bound with the decision emanating therefrom. See **Sakina Sote Kaitany and Anor. vs. Mary Wamaitha Civil Appeal No. 108 of 1995.**

32. However, Court orders are not meant for cosmetic purposes. They are serious decisions that are meant to be and ought to be complied with strictly. As was held in **Teacher's Service Commission vs. Kenya National Union of Teachers & 2 Others Petition No. 23 of 2013**:

> **"The reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt of court proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed. A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option."**

33. It was therefore appreciated by **Ojwang, J** (as he then was) in **B vs. Attorney General [2004] 1 KLR 431** that:

> **"The Court does not, and ought not to be seen to, make Orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people."**

34. As this Court held in **Republic vs. Kenya School of Law & 2 Others exp Juliet Wanjiru Njoroge & 5 Others** (supra):

> **"'Court orders, it must be appreciated are serious maters that ought not to be evaded by legal ingenuity or innovations. By deliberately interpreting Court orders with a view to evading or avoiding their implementation can only be deemed to be contemptuous of the court."**

35. It is for this reason that Courts nolonger readily entertain the failure to comply with their orders on the ground of failure to serve the same accompanied by a penal notice. The requirement for service is only meant to bring to the attention of those concerned the existence of the Court order and is not the pre-requisite to the obedience of a Court order. This was the position in **Moses P N Njoroge & Others vs. Reverend Musa Njuguna & Another Nakuru HCCC No. 247 "A" of 2004** where **Musinga, J** (as he

then was) recognized that the rule of law requires that orders of the Court be respected and obeyed and that duty equally applies even where a party is dissatisfied with an order and has appealed to an appellate court against the order, ruling or judgement; that contemnors undermine the authority and dignity of the Courts and must be dealt with firmly so that the Court's authority is not brought into disrepute. Contempt of court is an affront to judicial authority and therefore is not a remedy chosen by a party but is invoked to uphold the dignity of the court.

36. Where it has been brought to the Court's attention that its orders are being abrogated or abridged by brazen or subtle schemes and manoeuvres in the name of technical procedures, this Court cannot turn a blind eye to the same. As was held in **Gatharia K. Mutitika & 2 Others vs. Baharini Farm Ltd. [1985] KLR 227:**

> **"It is quite clear on the authorities that anyone who, knowing of an injunction, or an order of stay, wilfully does something, or causes others to do something, to break the injunction or interfere with the stay, is liable to be committed for contempt… The reason is that by doing so he (or she) has conducted himself (or herself) so as to obstruct the course of justice and so has attempted to set the order of the court at naught."**

37. I therefore associate myself with **Lenaola, J** in **Basil Criticos vs. Attorney General & 4 Others [2012] eKLR**, **Republic vs. Minister of Medical Services Misc. Civil Application No. 316 of 2010** that:

> **"…the law has changed and so as it stands today, knowledge supersedes personal service and for good reason…where a party clearly acts and shows that he has knowledge of a court order, the strict requirement that personal service must be proved is rendered unnecessary."**

38. This position was adopted by **Musinga, J** in **Republic vs. Minister of Medical Services** (supra) and **Kimaru, J** in **Gatimu Farmers Company vs. Geoffrey Kagiri Kimani & Others [2005] eKLR**. In the former case the learned Judge expressed himself as follows:

> **"Article 159(2) (d) of the Constitution requires the court to administer justice without undue regard to procedural technicalities. Article 10 of the Constitution stipulates various national values and principles of governance which bind all state organs, state officers, public officers and all persons whenever any of them applies or interprets the constitution or any law or implements public policy decisions. The values include the rule of law, good governance, integrity, transparency and accountability. The rule of law is vital in the stability of any nation and its institutions. In this new constitutional dispensation, it would be a mockery of justice for a respondent in contempt proceedings to come to court and say that even though he was aware of the terms of a prohibitory order, the order was not properly served upon him or that he considered the same to have some procedural defect, for example, lack of indorsement thereon, and therefore he ought not to be punished for contempt of court."**

39. This is akin to the position taken by **Akiwumi, J** (as he then was) in **Kenya Tourist Development Corporation vs. Kenya National Capital Corporation Limited & Another Nairobi HCCC No. 6776 of 1992** when he expressed himself as follows:

> **"An injunction in prohibitory form operates from the time it is pronounced, not from the date when the order is drawn up and completed. Consequently the party against whom it is made will be guilty of contempt if he commits a breach of the injunction after he has received notice of it, even though the order has not been drawn up...Where an order requires a person to abstain from doing an act, it may be enforced, notwithstanding that service, of a duly endorsed copy of the order has not been served, if the Court is satisfied that pending such service, the person against whom enforcement is sought has had notice of the terms of the order either by being present when the order is made or being notified of the terms of the order whether by telephone, telegram or otherwise...It is of high importance that orders of the Court should be obeyed. Wilful disobedience to an order of the Court is punishable as a**

contempt of court and such disobedience may properly be described as being illegal...Those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted by the illegality that produced them."

40. As stated in ***Halsbury's Laws of England***, 4th Edn. Vol. 5 para 65:

"Where an order requires a person to abstain from doing an act, it may be enforced notwithstanding that service of a duly indorsed copy of the order has not been served, if the court is satisfied that, pending such service, the person against whom enforcement is sought has had notice of the terms of the order either by being present when the order was made or being notified of the terms of the order, whether by telephone, telegraph or otherwise."

41. It must however be remembered that Court orders are not made in vain and are meant to be complied with. If for any reason a party has difficulty in complying with court orders the honourable thing to do is to come back to court and explain the difficulties faced by the need to comply with the order. Once a Court order is made in a suit the same is valid unless set aside on review or on appeal. In **Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828, Ibrahim, J** (as he then was) stated:

"It is essential for the maintenance of the rule of law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void".

42. This position was confirmed by the Court of Appeal in **Refrigerator & Kitchen Utensils Ltd. vs. Gulabchand Popatlal Shah & Others Civil Application No. Nai. 39 of 1990**. In **Wildlife Lodges Ltd vs. County Council of Narok and Another [2005] 2 EA 344 (HCK)** the Court expressed itself thus:

"It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a Court of competent jurisdiction to obey it until that order was discharged, and disobedience of such an order would, as a general rule, result in the person disobeying it being in contempt and punishable by committal or attachment and in an application to the court by him not being entertained until he had purged his contempt. A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it…It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid – whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed…If there is a misapprehension in the minds of the defendants as to the reasonable meaning of the order, then the expectation of them is that they would have made an application to the court for the resolution of any misunderstanding and this would have been the lawful course…In cases of alleged contempt, the breach for which the alleged contemnor is cited must not only be precisely defined but also proved to the standard which is higher than proof on a balance of probabilities but not as high as proof beyond reasonable doubt…The inherent social limitations afflicting most people in a developing country such as Kenya have the tendency to restrict access to the modern institutions of governance, and more particularly to the judiciary which is professionally run, on the basis of complex procedures and rules of law. Yet, this same Judiciary is generally viewed as the impartial purveyor of justice, and the guarantor of an even playing ground for all, a perception which ought to be strengthened, through genuine respect for the courts of justice, and through compliance with their orders. Consistent obedience to court orders is

required, and parties should not take it upon themselves to decide on their own which court orders are to be obeyed and which ones overlooked, in the supposition that this oversight will not impede the process of justice…Justice dictates even-handedness between the claims of parties; and if it be the case that the plaintiff/applicant has not been accorded a level playing ground for the realisation of its economic activities, a matter that of course can only be established through evidence in the main suit, then the court ought to provide relief, by applying the established principles of law, one of these being the law of contempt…An *ex parte* order by the court is a valid order like any other and to obey orders of the court is to obey orders made both *ex parte* and *inter partes* since the Court by section 60 of the Constitution is the repository of unlimited first instance jurisdiction, and in this capacity it may make *ex parte* orders where, after a careful and impartial consideration, it is convinced that issuance of such an order is just and equitable. There is nothing potentially oppressive in an *ex parte* order, since such an order stands open to be set aside by simple application, before the very same court… Where a party considers an *ex parte* order to cause him undue hardship, simple application will create an opportunity for an appropriate variation to be effected thereto; and therefore there will be no excuse for a party to disobey a court order merely on the grounds that it had been made *ex parte* and this argument will not avail either the first or the second defendant".

43. In **Central Bank of Kenya & Another vs. Ratilal Automobiles Limited & Others Civil Application No. Nai. 247 of 2006**, the Court of Appeal held that Judicial power in Kenya vests in the Courts and other tribunals established under the Constitution and that it is a fundamental tenet of the rule of law that court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a Court of law.

44. In **Wildlife Lodges Ltd vs. County Council of Narok and Another [2005] 2 EA 344 (HCK)** the Court expressed itself thus:

"It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a Court of competent jurisdiction to obey it until that order was discharged, and disobedience of such an order would, as a general rule, result in the person disobeying it being in contempt and punishable by committal or attachment and in an application to the court by him not being entertained until he had purged his contempt. A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it…It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid – whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed…If there is a misapprehension in the minds of the defendants as to the reasonable meaning of the order, then the expectation of them is that they would have made an application to the court for the resolution of any misunderstanding and this would have been the lawful course…In cases of alleged contempt, the breach for which the alleged contemnor is cited must not only be precisely defined but also proved to the standard which is higher than proof on a balance of probabilities but not as high as proof beyond reasonable doubt…The inherent social limitations afflicting most people in a developing country such as Kenya have the tendency to restrict access to the modern institutions of governance, and more particularly to the judiciary which is professionally run, on the basis of complex procedures and rules of law. Yet, this same Judiciary is generally viewed as the impartial purveyor of justice, and the guarantor of an even playing ground for all, a perception which ought to be strengthened, through genuine respect for the courts of justice, and through compliance with their orders. Consistent obedience to court orders is required, and parties should not take it upon themselves to decide on their own which court orders are to be obeyed and which ones overlooked, in the supposition that this oversight will not impede the process of justice…Justice dictates even-handedness between the claims of parties; and if it the case that the plaintiff/applicant has not been accorded a level playing

ground for the realisation of its economic activities, a matter that of course can only be established through evidence in the main suit, then the court ought to provide relief, by applying the established principles of law, one of these being the law of contempt…"

45. Therefore when it comes to obedience to a Court order, it is what is intended to be achieved by the Court order that matters and not merely the parties to the suit. Where the intention is clear of what is sought to be prevented a person cannot escape the wrath of the Court by simply contending that he or she was not a party to the proceedings if the order was brought home to him and he ought to have known what to do or not to do.

46. I therefore do not agree that the persons cited herein can simply escape the parameters of contempt by simply contending that they were not parties to the original proceedings. They were not total strangers to the business that was before the Court and which the Court determined. They were in fact rungs of the ladder which the former students of the Applicants intended to follow to reach their destination and goals.

47. Having said that, it is clear that **Korir, J** in his decision simply quashed the 1st Respondents decision and left the 1st Respondent to proceeded as required by the law. The Judge was not dealing with the merits of the dispute but with the process under which the decision was arrived at. In those circumstances, the Respondents are at liberty to proceed in the manner provided by the law.

48. In **Republic vs. University of Nairobi Civil Application No. Nai. 73 of 2001 [2002] 2 EA 572** the Court of Appeal expressed itself as follows:

"The learned judge had jurisdiction to quash the University decision but whether he was right or wrong in exercising that jurisdiction in the manner he did is not and cannot be a matter for the Court's consideration in the application for stay of execution pending appeal. It is doubtful whether the university could be prohibited from instituting further disciplinary proceedings after the earlier ones had been quashed unless, of course it was shown that the proposed further proceedings would be contrary to law…Under section 8(2) of the Law Reform Act, the High Court has power to issue the orders of *certiorari,* prohibition and *mandamus* in circumstances in which the High Court of Justice in England would have power to issue them. The point to be canvassed in the intended appeal being whether, in the exercise of his admitted jurisdiction, the learned judge was in fact entitled to, in effect, issue an order of *mandamus* against the University when neither the applicants nor the University had asked for such an order, is clearly arguable. If the superior court had no jurisdiction to order a retrial, then the validity of the subsequent proceedings held pursuant to such an order would themselves be highly questionable."

49. In my view, once a Court has quashed the decision of an inferior Tribunal or authority, it is upon that body or Tribunal to decide on what steps to take thereafter unless the body has a duty to act in a particular manner.

50. That the Respondents took action of calling the Applicant's former students for interview is not in dispute. That a decision was made thereon is also not in dispute. In other words by taking the said action, the Respondents had reversed their earlier decision of wholesomely suspending the *ex parte* Applicant. If the Respondents had maintained their earlier position which was quashed, that the *ex parte* Applicant was suspended, there would have been no reason to interview the Applicant's former students as the said students would have been disqualified *ab initio*. There is some uncontroverted evidence that some of the said students were admitted while some were not. As to whether the decision arrived thereafter was right or not is another matter altogether and is outside the scope of this investigation. If the students who were not admitted were aggrieved by the decision rejecting their applications, that would have been a new cause of action separate from the one which **Mr Justice Korir** determined and that cannot be the subject of these contempt of court proceedings.

51. In other words, whether or not the Respondents committed errors in the course of considering the applications by the said former students can only be subject of fresh legal proceedings. Otherwise by

considering their applications it is my view that the Respondents had complied with the Court order. The Court did not order that the students' application be favourably considered. It only quashed the decision made by the Respondents in declining to consider the applications by the Applicants' students without having followed the due process.

52. Having considered the instant application, it is my view that the Applicant has failed to prove to the standards required that the persons cited herein are guilty of contempt of Court. In the premises I do not have to decide the ex parte Applicant's wisdom in applying for contempt in the circumstances of this case where the persons aggrieved are its former students.

Order

53. It follows that the Amended Notice of Motion dated 12th March 2015 fails and is dismissed and just as my brother **Mr Justice Korir**, found, there will be no orders as to costs.

54. It is so ordered.

Dated at Nairobi this 12th day of November, 2015

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Nzaku for the exp Applicant

Mr Bwire for the Respondent

Cc Patricia