REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL DIVISION

CIVIL CASE NO. 1208 OF 2003

AFRICAN COMMUTER SERVICES LTD .....DECREE HOLDER

VERSUS

THE KENYA CIVIL AVIATION AUTHORITY .....JUDGMENT DEBTOR

AND

NATIONAL BANK OF KENYA LIMITED.....1ST GARNISHEE

CFC STANBIC BANK LTD .....2ND GARNISHEE

R U L I N G

1. In or about January, 2003, the Kenya Civil Aviation Authority ("the Respondent") suspended or cancelled the Decree Holder's Air Operator's Certificate. That act led to the grounding of all the seven (7) aircrafts belonging to the Applicants from operation. As a result, the Applicant's aviation business which had been successfully carried on from 1996 came to a grounding halt. Later that year, the Applicant sued the Respondent and the Attorney General for various reliefs. The Applicant succeeded in that suit vide a judgment delivered on 18th December, 2008.
2. However, the Attorney General and the Respondent appealed against that decision whereby, after the hearing thereof, the Court of Appeal delivered its judgment in favour of the Applicant for Kshs.362,615,656/- plus interest and costs. A decree was issued thereon on 20th March, 2014. The Applicant made several demands on the Respondent to settle the sum without success.
3. On 31st October, 2014 the Applicant took out a Motion on Notice expressed to be under Order 23 Rules 1, 9 and 10 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeking to garnishee funds belonging to the Respondent to the tune of Kshs.1,421,671,718/- held by the 1st Garnishee in account Nos.0100-3050844-7600 JKIA Branch and 010-000-003-517-27 Industrial Area Branch of the 2nd Garnishee. The Applicant also sought an order for the release of the said sum to it in satisfaction of the aforesaid decree. There was a further prayer that in the event the garnishees dispute holding the said sums, they do appear in court to show cause why they should not pay the sums held in those accounts.
4. The grounds for the application were contained in the body of the motion and Supporting

Affidavit of one Esmail Jibril sworn on 31st October, 2014. These were, inter alia, that; the Applicant commenced this suit by way of a plaint dated 12/11/03 claiming approximately Kshs.1.3 billion against the Respondent; that the Applicant succeeded in its suit in the High Court but the Respondent appealed to the Court of Appeal; that the Court of Appeal had decreed a sum of Kshs.1,421,671,718/= in its favour vide a decree issued on 20/3/14; that the Respondent holds the aforesaid Accounts with the named Garnishees which had funds capable of satisfying the decree and that the Respondent was hell bent in frustrating the settlement of the decree.

5. At the hearing of the application Mr. Ahmednasir, Learned Senior Counsel for the Applicant submitted that despite various reminders, the Respondent had failed to settle the decreed amount; that the decree sought to be enforced was that issued by the Court of Appeal and not the High Court in its original jurisdiction; that there are certain defendants in this Country who do not pay court judgments; that Section 7 of the Kenya Civil Aviation Authority Act (sic) prohibits the attachment of the Respondent's assets in execution of Court processes. Counsel submitted that the proposed intended appeal to the Supreme Court by the Respondent was frivolous; that there was no stay of execution against the decree. That the Applicant had abandoned its costs and therefore Section 94 of the Civil Procedure Act was not applicable. That further, since the decree sought to be executed was that of the Court of Appeal and not the High Court, there was no need of leave to execute before taxation. Counsel relied on the decision **of Erad Suppliers & General Contracts Vs NCPB - Misc. Civ. Case No. 639 of 2009 (UR)** in support of that proposition. Counsel therefore urged that the application be allowed as prayed.
6. The application was opposed by the Respondent vide a Replying Affidavit of Judith N.M. Ngethe sworn on 10th November, 2014. It was contended for the Respondents that it was true that the Court of Appeal had reduced the award of the High Court by approximately Kshs.600 million; that the Respondent had since filed a Notice of Appeal to the Supreme Court against that decision; that there is still pending before the Court of Appeal, an application for leave to appeal to the Supreme Court and stay of execution; that the said intended appeal to the Supreme Court would be rendered nugatory if execution is allowed to commence; that if the Respondent's money is attached it will cripple its day to day operations as it is operational capital; that in any event, the application was premature as costs had not been ascertained. Finally, that the matter involves issues of immense public, national and international importance as it is related to the safety of air transport.
7. At the hearing, Mr. Gatonye, Learned Counsel for the Respondent submitted that the application was premature, mischievous and without merit. That what was being executed was the decree of this court but pronounced by the Court of Appeal; that it was a decree emanating from the High Court and that it was incorrect to submit that it is not a decree passed by the High Court in its original jurisdiction; that according to Section 94 of the Civil Procedure Act, leave must be obtained if a party has to execute a decree before taxation; that such a leave must be obtained at the time of delivery of judgment or through formal application.
8. That Section 94 aforesaid was one of general application and Order 22 Rule 7(2) of the Civil Procedure Rules that sought to oust such general application was ultra vires and that the said section cannot be interpreted otherwise than as such. The Court of Appeal cases of **Shamsher Kenya Ltd Vs Body & Soul Ltd (2006) eKLR and Bamburi Portland Cement Ltd Vs Inranali Chandbhai Abdulhussein (1996) eKLR** were cited in support of those submissions. Counsel further submitted that if a party wished to forego its costs, as the Applicant had intimated in this case, there has to be an order to that effect beforehand. He therefore submitted that the case of **Erad suppliers and General contractors (supra)** had been decided without the court being referred to the Court of Appeal decisions on the tenure and effect of Section 94.
9. Further to the foregoing, Mr. Gatonye submitted that the Respondent had already filed an application for leave and stay in the Court of Appeal and that this court should guard against rendering the same nugatory; that the Respondent is a public corporation which regulates a very sensitive and vital industry, that is aviation; that if the operating capital in the two banks are attached, it will cripple the Respondent's operations which may lead to sanctions by the International Civil Aviation Authorities. On whether the Respondent had a right of audience in the application, it was submitted that under Article 50 of the Constitution of Kenya as read with Order 23 Rule 1 sub rules (2) and (3) of the Civil Procedure Rules, a judgment-debtor has a right of audience. Finally, on the authority of **East African Cables Ltd Vs Public Procurement**

Complaints Review and Appeals Board & Anor (2007) eKLR, Mr. Gatonye urged that if, for any reason, this court felt that the orders sought were not merited, public interest required that there was a corresponding duty on the part of the Court to ensure that the Respondent is not hamstrung in its performance of its duties and should therefore be given six (6) months to comply. He urged the court to dismiss the application with costs.

10. I have carefully considered and examined the Affidavits on record, the submissions of Counsel and the authorities relied on. When the hearing of the application commenced, Mr. Gatonye had indicated that he wished to raise a Preliminary Objection as contained in paragraph 12 of the Replying Affidavit of Judith N.M. Ng'ethe. That objection was expressed in that Affidavit as follows:-

> ***"THAT any money belonging to the judgment debtor is operational capital which is reserved to run the day-to-day operations of the judgment debtor. In this regard, attachment of such money would be detrimental to the aviation industry in Kenya. In any event, the application is premature and incompetent for the reason that no leave has been sought and granted to execute the decree before taxation. It is an undeniable fact that the costs awarded in the decree have not been taxed and no leave was sought by the decree holder to dispense with such taxation for purposes of execution at the delivery of judgment or hereafter." (Underlining supplied***)

11. I ordered that, the said objection having been merged in the Affidavit with the rest of the opposition to the application, the same be argued as part of the grounds of opposition to the application.

12. Section 94 of the Civil Procedure Act provides:-

> ***"94. Where the High Court considers it necessary that a decree passed in the exercise of its original jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the court may order that the decree shall be execute forthwith, except as to so much thereof as relates to the costs, and as to so much thereof as related to the costs that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation."***

It is clear from this provision that a decree holder must obtain leave of court to execute a decree if costs have not been ascertained.

13. While considering this provision in the case of **Lakeland Motors Ltd Vs Sembi (1998) LLR 682**, the Court of Appeal observed that:-

> ***"The exercise of judicial discretion by the superior court under Section 94 of the Act necessarily required that parties to a decree passed by that court in the exercise of its original civil jurisdiction should be availed an opportunity to be heard before making an order for execution of that decree before taxation.***
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> ***This, we think, is the spirit of the observation of Shah J.A, with which we agree in Bamburi Portland Cement Co. Ltd Vs Abdulhussein (1995) LLR 2519 (CAK) in regard to the application of Section 94 of the Act."***

14. From the foregoing, it is clear that that provision applies to a decree that is passed in the exercise of the High Court in its original jurisdiction and that execution cannot be undertaken before taxation unless with leave of the court. It is not disputed that the suit herein was commenced, prosecuted before this court and that in its original civil jurisdiction, this court determined the suit vide its judgment of 19th December, 2008. That judgment was appealed against by, inter alia, the Attorney General who was the second Defendant in the suit. That judgment had found against both the Attorney General and the Respondent. The decree extracted from that judgment was to the effect that the Respondent was, inter alia, to pay a sum of approximately Kshs.1.3 billion. The Attorney General was also ordered to formally supply to the decree holder the accident inquiry

report within 30 days of the judgment.

15. On appeal, the Court of Appeal interfered with the said judgment to a great extent in that, the decree against the Attorney General was set aside and the total amount payable by the Respondent was reduced from Kshs.1,345,616,019/65 to a mere Kshs.362,615,656/= plus interest and costs. That was in Civil Appeal No. 311 of 2009. That Judgment was supplied to this court and the court has carefully examined the same. A decree was thereafter extracted in terms of that Judgment. That is the decree that is being sought to be executed by the Applicant. The question that arises is whether that decree was one passed in the exercise of the High Court's original civil jurisdiction in terms of Section 94 of the Civil Procedure Act. The Applicant contends that that decree is of Court of Appeal whilst the Respondent insists the decree is that of this court.
16. The Civil Procedure Act and Rules make provision on how decrees from judgments of the High Court are to be extracted and executed. On the other hand the jurisdiction of the Court of Appeal is given by both the Constitution and the Appellate Jurisdiction Act, Cap 9 Laws of Kenya. Rule 33 of the Court of Appeal Rules provides:-

> ***"33.(1) Every decision of the court on an application or appeal, other than a decision on an application made informally in the course of a hearing shall be embodied in an order***
>
> ***(2) .....***
>
> ***(3) An order on an application shall be substantially in the Form I in the First Schedule and an order on appeal substantially in the Form J in the Schedule."*** *(Underlining mine)*

17. I have looked at Form J in the Schedule to that Act. The Form is expressed in the form of an order and not a decree.
18. Section 4 of the Appellate Jurisdiction Act provides:-

> ***"4. Any judgment of the Court of Appeal given in the exercise of its jurisdiction under this Act may be executed and enforced as if it were a judgment of the High Court." (Underlining supplied)***

19. Apart from these two provisions, I have not seen any other provision in the Appellate Jurisdiction Act that provides for issuance of decrees for that court. The judgments of that Court are expressed in terms of orders. My view is that it is because execution of judgments in the Civil Procedure Rules are effected by way of decrees, that Section 4 of the Appellate Jurisdiction Act directs that a judgment of that court be executed as if it were a judgment of the High Court. In this regard, it would be safe to conclude that there can be no decree of the Court of Appeal. Any Judgment of that court when being executed, it will be expressed by way of a decree as if it were that of the High Court.
20. In view of the foregoing, whilst the decree annexed to the application is expressed to be under Civil Suit No. 120 of 2003 which is this suit, it is clearly not the decree of this court but that of the Court of Appeal as ordered in the Judgment of that Court of 7th February, 2014 in CA No. 311 of 2009. It emanated from the decision of that court. That court greatly interfered with the decree that had been issued by this court in its original jurisdiction on 19th December, 2008. In my view therefore, the decree sought to be executed is not that of this High Court in its original jurisdiction but of the Court of Appeal. Accordingly, I agree with the contention by the Applicant that to that extent, Section 94 of the Civil Procedure Act does not apply in the present case.
21. I should point out here that, I am alive to the Court of Appeal's decision in the case of **Bamburi Portland Cement Company Ltd Vs Imranali Chandbhai Abdulhussein 1996 eKLR** that Section 94 is of general application. I agree with that position of the law, but only to the extent that such general application is in respect of decrees made by the High Court in its original jurisdiction. To my mind, the decree before me is not made by the High Court in its original jurisdiction and accordingly, that case as well as the case of **Shamsher Kenya Ltd Vs Body & Sound (supra)** relied on by the Respondent are not applicable. In this regard, leave was not

required to proceed with the present application by the Applicant.

22. However, even if leave was required, would it be necessary in the circumstances? I do not think so. The Applicant's Counsel informed the Court that the Applicant had foregone its costs. It was contended for the Respondent that there was no evidence of such a waiver. That there had to be an order of leave before the application could be filed.
23. My view of the matter is, the mischief sought to be addressed by Section 94 was to protect a judgment debtor from suffering multiple executions in respect of the same suit; i.e one in respect of the principal sum and the other for the costs after ascertainment. In this regard, if it is shown to the satisfaction of the court that the judgment creditor has foregone or waived costs and that the execution is for the principal sum and interest only, there is nothing in law, in my view, that bars the court to record such a fact and make an order accordingly. It will not be necessary in my view for the Applicant in the circumstances to make such application formally. Under Sections 1A and 1B of the Civil Procedure Act and Article 159 (2) (b) and (d) of the Constitution, the court will be perfectly entitled to record such waiver and make an order for the Applicant to waive costs and at the same time allow execution to proceed.
24. When faced with a similar case in **Erad Suppliers & General Contractors –Vs- NCPB (Supra),** Odunga Judge held:-

> ***"If a party can abandon a whole claim I do not see why the same party if he feels sufficiently Philanthropic, cannot forego the costs, can it be argued that even in cases where a party has abandoned costs , leave to execute before costs are taxed is still necessary? In my view, the necessity for leave to be obtained where a party intends to execute before taxation is to obviate situations where a judgment debtor is likely to be confronted with two sets of execution proceedings. In respect of the same decree i.e. for the principal sum and for costs. This is a recognition of the fact that in a civil action the main aim is compensation and the process should not be turned into a punitive voyage. Therefore where there are no costs to be paid or where a party entitled to costs has abandoned or waived the same, in my view, Section 94 of the Civil Procedure Act does not apply. If the Respondent was not aware that the claimant was not keen on the said costs now it is aware and that would render that ground unnecessary." (Emphasis supplied)***

25. I agree with that exposition of the law and accordingly apply the same here. Since the Counsel for the Applicant intimated both to the Court and the Respondent at the hearing of the application, that the Applicant had waived its claim to costs, the Respondent is notified accordingly and in my view, there will be no prejudice to be suffered or has been suffered by the Respondent if that order is accordingly endorsed on the record. In this regard, I reject the Respondent's submission that the decision of **Erad Suppliers & General Contracts (Supra)** on the point was made obiter and that the Court was not referred to the decisions of the Court of Appeal on that point. I further reject the submission that interpreting Section 94 as was in the **Erad Case (Supra)** would lead to legislation by the Courts.
26. In view of the foregoing I reject and dismiss the Preliminary Objection by the Respondent to the application.
27. On the merits, there is evidence that a decree has been issued for a specified sum, there has been demands for settlement but the Respondent has not complied. It has been alleged on oath that monies belonging to the Respondent are held by the two named Garnishees. The opposition to the application is the ground that the Respondent has lodged an application in the Court of Appeal for leave to appeal to the Supreme Court against the decision of the Court of Appeal in **C.A NO. 31 OF 2009** and for stay of execution. That that application was pending and may come up for hearing at anytime and that if the orders sought in the present application were granted, the application in the Court of Appeal would be rendered nugatory.
28. From the record, the Court of Appeal delivered its judgment in C.A NO. 311 of 2009 on 7th February, 2014. The Respondent filed a Notice of Appeal against that decision on 20th February, 2014. It waited until 27th May, 2014 to lodge the said application for leave and stay in the Court of Appeal. As at the time the parties were before me, no date for hearing had been allocated for that application. My view is, a party who genuinely intends to pursue a legal right, and in particular

that of appealing against a decision of a competent Court to a higher Court must conduct himself in a manner that is consistent with a bona fide intention of pursuing that right. Its conduct should not seem to be obstructive of the cause of justice. In my view, such conduct includes acting timeously with a view to readily obtain the remedy sought.

29. In the case at hand, the Respondent did lodge its intention to appeal within 13 days out of the 14 days prescribed by Rule 31 (1) of the Supreme Court Rules, 2012. The Respondent then took over three (3) months to file the application for leave and stay in the Court of Appeal. No reason has been advanced for such a delay. A period of three (3) months to seek a stay of execution is in my view inordinate. To my mind, I am satisfied that for whatever it is worth, that application said to be pending in the Court of Appeal cannot be a bar to the decree holder as a successful litigant from seeking to enforce its right to enjoy the fruits of its litigation. In this regard, Article 159 (2) (b) requires that justice be dispensed with without undue delay. Will it be just in the circumstances to delay the wheels of justice in favour of a litigant who took three months to seek a remedy in the Court of Appeal? In the absence of an explanation as to the delay between 20/2/14 and 27/05/14, I do not think that it will be just.

30. As to the likelihood of that application being rendered nugatory if the present application is granted, I do not think so. The decree sought to be executed is a lawful one issued by the Court of Appeal. In any event, I think that is an issue which should be addressed by the Court of Appeal and not this court.

31. There is then the issue of public interest. It was submitted that the Respondent is a regulator of a very crucial, vital and sensitive industry, Aviation. That if the monies sought to be attached are so attached, it will disrupt the operations of the Respondent which might lead to blacklisting by the International Civil Aviation Authorities. That there is a duty on the part of this court to ensure that the operations of an important public body such as the Respondent are not disrupted or its performance interfered with.

32. I agree with the Respondent that when this court is enforcing the law, it should do so while having in mind public interest; that operations of public corporations are not unnecessarily interfered with; that monies payable by such corporations belong to the tax payer and to ensure that public interest is always protected and safeguarded. However, at the same time, this court must have in mind that Kenyans have given themselves a Constitution to govern them; that they have also given themselves a Parliament that has passed laws which must be administered and applied without favour or discrimination.

33. Article 2(1) of the Constitution provides that the Constitution of Kenya binds all persons and all state organs at both levels of government. Article 159(2) (1) of the same Constitution enjoins this court, in exercise of its judicial authority to be guided by the principle that justice should be done to all irrespective of status. Finally, Article 10(1) of the Constitution provides that this court is bound by national values and principles of governance in applying and interpreting the law. One of these values and principles of governance is the rule of law under Article 10(2) (a) of the Constitution.

34. It is therefore public interest that the Constitution and the law of the land be strictly obeyed. Kenyans were alive to the fact that the operations of public bodies such as the Respondent should not be easily disrupted through execution by attachment. As a result, they enacted Section 43 of the Civil Aviation Act No. 21 of 2013 to protect the Respondent from such attachments in execution of court process. That provision provides:-

"43.(1) Despite anything to the contrary in any law:-

a. ***Where any judgment or order has been obtained against the authority, no execution or attachment or process in the nature thereof, shall be issued against the immovable property of the Authority or any of its vehicles, vessels, aircrafts or its other operational equipment, machinery, fixtures or fittings, but the Director-General shall cause to be paid out of the revenue of the Authority such amount as may, by the judgment or order or decree, be awarded against the Authority to the person entitled thereto." (underlining supplied)***

35. Kenyans in their wisdom and in public interest did not exempt the Respondent from the process of Garnishee proceedings in execution of court process. In entrenching the Rule of Law as a

National Value and Principle of Governance in Article 10 of the Constitution, Kenyans were alive to the fact that that principle superseded all others. That principle of the Rule of Law only run in *pari pasu* with those set out in Article 10 (2) (a) in importance in the governance of this country. All others are but subservient to that principle.

36. In my view, the rule of law implies that a legislature constituted by the citizenry makes laws which are generally agreed upon; that those laws apply equally to all and are enforced by the executive that is constituted by the citizens. It also implies that those laws must apply to all, the individual Member of Parliament who make them, the individual members of the Executive who enforce them, the individual members of the Judiciary which interpret that law as well as the citizenry and all those who reside within the state. Rule of law, simply put, is absolute predominance or supremacy of the law of the land, no matter how powerful, privileged or important one is in society.

37. In this regard, I venture to suggest that rule of law presupposes the supremacy of the law. That the law must always be observed and respected by all in order to avoid the society degenerating into anarchy. Indeed once a court, which is the neutral arbiter, has settled a dispute, it is expected that the parties to such a dispute would move with haste to comply therewith. Failure to comply amounts to contempt of court that attracts sanctions. It is for this reason that O'leary J observed in **Canadian Metal Company Ltd Vs Canadian Broadcasting Corporation (No.2) 1975 48 DLR 3rd 641 at 669** that:-

> ***"To allow court orders to be disobeyed would be to tread the road towards anarchy. If orders of the Court can be treated with disrespect, the whole administration of justice is brought into, scorn....***
>
> ***.... if the remedies that the courts grant to correct ..... wrongs can be ignored, then there will be nothing left for each person but to take the law into his own hands. Loss of confidence in the courts will quickly result in the destruction of our society." (Underlining mine)***

38. Further, it was held in the case of **Morris and others Vs Crown Office (1970) 2 QB** at page 122 that:

> ***"The importance of it is (that) of all places where the law and order must be maintained the court of justice must not be defeated or interfered with. Those who strike at it strike at the very foundation of our society."***

39. In 2003, a dispute arose, inter alia, between the Applicant and the Respondent. The dispute ended before this court and the Court of Appeal. The two courts have already declared the rights of the parties. The principle of the rule of law in Article 10(2)(a) of the Constitution requires that the compensation ordered be effected. Since 07/2/14, when the Court of Appeal delivered itself and ordered that the Respondent do pay the Applicant the total sum of Kshs.362,615,656/=, the Respondent has not paid a dime. It intends to challenge that decision in the Supreme Court of Kenya. Apart from filing the Notice of Appeal, the Respondent waited for over 90 days from the decision of the Court of Appeal to express its desire by seeking leave. While the court is alive to the fact that it is perfectly within the right of the Respondent to have the matter considered by the highest court in the land, the court is also alive to the fact that a successful litigant should not be unnecessarily kept away from enjoying the fruits of his judgment. It is now eleven (11) odd years since the dispute started.

40. In this regard, I am persuaded to hold that whilst it is in the public interest to safeguard the operations of the Respondent, it is likewise in the public interest that there be law and order in this country. That the rule of law be maintained as decreed in the Constitution. That all litigants be treated equally without exception. That once the courts interpret the law and declare rights of disputants, those rights are forthwith enforced or bestowed upon those entitled without delay. The so called vital and sensitive aviation industry which the Respondent regulates cannot operate or exist in a state of anarchy. It can only exist and operate in a state where there is smooth administration of justice and application of the rule of law.

41. The Applicant was aggrieved by the actions of, inter alia, the Respondent over eleven (11) years ago. The Applicant, as a believer of the rule of law, came to court to have the dispute settled. That dispute was settled on 7th February, 2014. The Respondent has not taken any step whatsoever to comply with that court's decision. To my mind, it will be the saddest moment in the history of this country, and more so for the principle of the rule of law and constitutionalism, when a court of law will permit a litigant to comply with court orders at the litigant's own pace, time and pleasure. Eleven (11) long years are enough waiting for the Applicant to be compensated for a wrong done to it.
42. In this regard, I hold that the greater public interest requires that the Applicant be allowed to enforce its rights and thereby maintain and sustain the Constitutional value and principle of governance of the rule of law than to uphold narrow interests of allowing a state and public corporation to prevaricate or suspend the rule of law by refusing to obey a court's decision more so that of the Court of Appeal on the pretext of public interest!
43. In any event, the Respondent was not candid with the court. It only alleged that the monies in the subject bank accounts are operating capital. To my mind, if the Respondent was candid enough, it should have disclosed all the bank accounts that it operates apart from the two garnisheed and the respective balances thereon or if not, state to the court whether the two accounts are the only accounts it holds. The Respondent should also have disclosed the balances in those accounts for the court to gauge the veracity of the submissions or contentions that the sums therein are operating capital of the Respondent and that if the Court of Appeal order of 07/2/2014 is enforced by their attachment, the day to day operations of the Respondent would be affected. In the absence of such disclosures and explanation, I find it difficult to side with the Respondent.
44. In this regard, I reject the contention that public interest requires suspension of execution of the Court decree against the Respondent to allegedly enable the Respondent operate. The case of **East African Ltd Vs Public Procurement Complaints Review and Appeals Board & Anor (supra)** is accordingly not applicable to this case. The submission to suspend the orders is rejected. There can be no special category of citizens or corporations in this country who would operate outside the law. No litigant should be allowed the luxury of complying with the law or court order at his or its own terms, time and pleasure.
45. In this regard, I find that the Notice of Motion application dated 31/10/2014 is meritorious and I allow the same as follows:-

a. the Applicant hereby foregoes and/or waives the costs awarded both in this court and in the Court of Appeal.
b. Since the Garnishees were served with the application and did not either appear on file any objections thereto Prayer Nos. 2, 3, 4 and 5 of the Motion are granted as prayed.
c. There will be no order as to costs.

It is so ordered.

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A. MABEYA

JUDGE

Dated, signed and delivered at Nairobi this 26th day of November 2014.

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J. SERGON

JUDGE