REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL CASE NO. 242 OF 2013

AFRICA MANAGEMENT COMMUNICATION

INTERNATIONAL LIMITED…….....PLAINTIFF

VERSUS

JOSEPH MATHENGE MUGO …….....….....1ST DEFENDANT

ACCESS BUSINESS MANAGEMENT

CONFERENCING INTERNATIONAL LTD.....2ND DEFENDANT

R U L I N G

1. The Plaintiff commenced this suit on 12th June, 2013 by way Plaint. Together with the Plaint, the Plaintiff filed a Notice of Motion dated the same day under a Certificate of Urgency wherein it sought orders to restrain the 1st Defendant from being a director of the 2nd Defendant Company for a period of eighteen (18) months from 14th November, 2012 pending the hearing and determination of both the application and suit. In addition, the Plaintiff sought for the Defendants to be restrained from passing off and carrying themselves to the general public as a sister or associate company of the Plaintiff. Upon hearing the Plaintiff ex-parte on 13th June 2013, the Court made orders in the following terms:-

> ***"a) THAT the application be and is hereby certified as urgent.***
>
> ***b) THAT a temporary injunction be and is hereby issued restraining the defendants from passing off and carrying themselves to the general public as a sister company or associate company of the plaintiff and to further stop printing any materials or brochures in close resemblance with the plaintiffs for 14 days only to avoid any further exposure of the Plaintiff.***
>
> ***c) THAT the application be served for inter parties hearing within 14 days on a date to be fixed at the registry***."

When the matter came up for inter-partes hearing on 28th June 2013, the said orders were extended. Additionally, the Court also restrained the Plaintiff from advertising the above orders in the media as

it had previously done in the Daily Nation newspaper dated 16th and 28th June, 2013 respectively The court gave directions as to the disposal of the application by way of written submissions to be hi-lighted on 24th September, 2013.

2. The Plaintiff returned to court on 17th July, 2013 with yet another motion dated 16th July, 2013 this time seeking orders that the 1st Defendant, together with one Victoria Cecilia Karanja, who are directors of the 2nd Defendant, be cited for contempt of the orders of 13th June, 2013 and consequently be committed to jail for a period to be determined by this court. The Plaintiff also prayed that the Court do issue an injunction to restrain the Defendants from further planning, organizing, marketing and/or holding the proposed 2nd Executive Human Resource Symposium , 2013 on the 4th to 6th September, 2013 or any other dates. That application was supported by the Affidavit of Philip Phillani Dube sworn on 16th July, 2013 and is the subject of this ruling.
3. The Plaintiff averred that on or about the 12th, 13th and 14th September, 2012 the Plaintiff carried out an event known as the Human Resource Executive Symposium 2012 at the Hilton Hotel, in which the 1st Defendant was its contact person. That thereafter, the 1st Defendant was relieved of his duties at the Plaintiff Company on 15th November, 2012 when it came to the Plaintiff's knowledge that the 1st Defendant had established the 2nd Defendant with a view of passing it off as an associate company of the Plaintiff. Accordingly, the Plaintiff instituted the instant suit to restrain the Defendants from carrying on with the above noted activities which culminated in the orders of 13th June, 2013 which were extended on 28th June 2013.
4. The Plaintiff contended that in breach of the aforesaid orders, the Defendants had proceeded to organize and market a symposium called **"the 2nd Executive Human Resource Symposium, 2013"** scheduled for the 4th, 5th and 6th September, 2013, which was being passed off as a continuation of the Plaintiff's 2012 Executive Human Resource Symposium. It was contended that the said event had a similar name and targeted the same clientele as the Plaintiff's event. The Plaintiff therefore urged the Court to allow the application in the interest of justice.
5. Opposing the application, the Defendants and the alleged Contemnors (hereinafter collectively referred to as "the Defendants") filed a Replying Affidavit sworn on 29th July, 2013 by the 1st Defendant contending that the Plaintiff's application was fatally defective as it failed to adhere to the mandatory legal requirements that apply to contempt proceedings. The Defendants further contended that the Plaintiff misled the court in obtaining the orders of 13th June, 2013 as it did not own the intellectual property rights of both the Course known as Certificate for Executive Personal Assistants – ACEPA and the brochures in regard to the said course, which are the main materials complained of. It was further contended by the Defendants that the Plaintiff's claim of passing off against the Defendants was mischievous and amounts to an unfair trade practice.
6. In line with this, the Defendants contended that the Plaintiff holds no rights over the "Executive Human Resource Symposium" (**hereinafter "the event"**) as the same is owned by an entity known as Human Resources Boosters based in the Netherlands. That in marketing the event, the Defendants had made it clear to their clients, trainers and business associates as well as the general public, that the 2nd Defendant had no relation to the Plaintiff. As such it was contended that the holding of the event was organized with all stakeholders being aware that the Plaintiff and 2nd Defendant were separate and distinct entities. It was also claimed that the Plaintiff had no plans of holding their event on the 16th to 18th September, 2013 as alleged and that the brochures annexed to the Plaintiff's application were only meant to mislead the court. The 1st Defendant also denied having had any contractual relationship with the Plaintiff as alleged and therefore urged the Court to dismiss the application with costs.
7. I have considered the Affidavits on record, the submissions of counsel and authorities relied on. I propose first to deal with the prayer for contempt and committal. Black's Law Dictionary (Ninth Edition) defines contempt of court as:-

> ***"Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment."***

As early as 1778, Chief Justice McKean of the United States, when dealing with a case of a party in Civil litigation who refused to answer interrogatories is noted to have stated:-

"Since however, the question seems to resolve itself into this, whether you shall bend to the law, or the law shall bend to you, it is our duty to determine that the former shall be the case."

(The History of contempt of Court (1927) P 47)

In Johnson Vs Grant (1923) SC 789 at 790 Clyde L J noted:-

"The phrase 'contempt of court' does not in the least describe the true nature of the class of offence with which we are here concerned.... The offence consists in interfering with the administration of the law; in impending and perverting the course of justice..... it is not the dignity of court which is offended – a petty and misleading view of the issues involved, it is the fundamental supremacy of the law which is challenged." (Emphasis mine).

Closer home, in the case of **TEACHERS SERVICE COMMISSION v KENYA NATIONAL UNION OF TEACHERS & 2 others [2013]** eKLR **Ndolo J** observed that:-

> ***"38. The reason why courts will punish for contempt of court then 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 proceedings. It is about preserving and safeguarding the rule of law."***

8. I am of the same persuasion. The reason why power is vested in courts to punish for contempt of court is but to safeguard the rule of law which is fundamental in the administration of justice. The law of contempt has evolved over time in order to maintain the supremacy of the law and the respect for law and order. As it was in the time of Chief Justice McKean in 1778, so it is today that courts have a duty to ensure that citizens bend to the law and not vice versa. Indeed, if respect for law and order never existed, life in society would be but short, brutish and nasty. It is the supremacy of the law and the ultimate administration of justice that is usually under challenge when contempt of court is committed. This is so because, a party who obtains an order from Court must be certain that the order will be obeyed by those to whom it is directed. As such, the obedience of a court order is fundamental to the administration of justice and rule of law. A court order once issued binds all and sundry, the mighty and the lowly equally without exception. An order is meant to be obeyed and not otherwise.
9. In the case before me, the Plaintiff has applied to have the Defendants committed to jail for disobeying the order of 13th June, 2013. The Defendants on their part have challenged the application first on the basis that it has been wrongly brought. According to Mr. Wanyaga, learned Counsel for the Defendants, the Plaintiff failed to take steps to fulfill the conditions precedent before or on filing the motion. Mr. Wanyaga argued that leave was not obtained before commencing the contempt proceedings; that there was no notice to the Registrar and the Attorney General within the prescribed timelines. It was therefore contended that failure to adhere to these procedures rendered the Plaintiff's application incompetent and the same should therefore be dismissed. The Defendants relied on the cases of **John Mugo Gachuki Vs New Nyamakima Co. Ltd (2012) eKLR** and **Republic Vs County Council of Nakuru Ex-Parte Edward Alera t/a Genesis Reliable Equipment & 2 others [2011] eKLR** in support of their argument.
10. In reply, the Plaintiff argued that under Sections 1A and 1B of the Civil Procedure Act, the Court should look at substantive justice and not place undue regard to technicalities. Accordingly, learned Counsel for the Plaintiff submitted that the application had been properly brought under Order 40 Rule (1) and (2) of the Civil Procedure Rules, which is sufficient in terms of disobedience of an injunctive order.
11. In my view, there exists two legal regimes in this country regarding punishment for contempt of court. This is to be found in Section 5 of the **Judicature Act** and **Section 63** of the **Civil Procedure Act**. Section 5 of the Judicature Act provides:-

> ***"5.(1) The High Court and the Court of Appeal shall have <u>the same power to punish for contempt of court</u> 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." (Underlining mine)***

From the foregoing, it is clear that this provision gives a general power to punish for contempt of court. It is a power that extend to upholding the authority of subordinate courts. To my mind, it is a provision that is general and not specific in its tenure as to particular contempt. It applies to all forms of contempt of court.

12.On the other hand, Section 63(c) of the Civil Procedure Act provides that:-

> ***"63) In order to prevent the ends of justice from being defeated, the court may, <u>if it is so prescribed</u>:-***
>
> ***a) ……..***
>
> ***b) ……***
>
> ***c) Grant a temporary injunction and <u>in case of disobedience commit the person guilty thereof to prison</u> and order that his property be attached and sold".***

Pursuant to Section 63 (c) aforesaid, it is provided in Order 40 Rule 3(1) of the Civil Procedure Rules that:-

> ***"3(1) <u>In case of disobedience, or breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in prison for a term not exceeding</u> six months unless in the meantime the court directs his release". (Underlining supplied)***

To my understanding, it is unequivocal that, pursuant to Section 63 (c) of the Civil Procedure Act, **Order 40 Rule 3 (1) of the Civil Procedure Rules** will only apply where the breach relates to orders of an injunction. Therefore, the power donated under Section 63 of the Civil Procedure Act and order 40 Rule 3 (1) is only in respect of disobedience of an order of injunction. It is a specific power. A close look at **Order 40** of the **Civil Procedure Rules** will show that that provision is silent on the procedure to be followed when bringing an application to punish for breach of a Court order in the nature of an injunction. In this regard, my view is and I so hold that an application under order 40 Rule 3 (1) of the Civil Procedure Rules does not require leave or service of notice to the Attorney General. One cannot read into the law that which is not expressed therein. When the legislature enacted Section 5 of the Judicature Act in 1977, it was aware of Section 63 (c) of the Civil Procedure Act that had been enacted in1948. That provision was categorical on how to deal with disobedience of an order of injunction. In this regard, the requirement for leave and service of Notice upon the Attorney General is a procedure under the Rules of the Supreme Court of England and is applicable if an application is under Section 5 of the Judicature Act. In this regard, the authorities relied on by the Defendants, are of no assistance as the same can be distinguished. In **<u>John Mugo Gachuki –Vs- New Nyamakima (supra)</u>**, the matter involved an injunctive order. However, the Court correctly held that since the applicant in that case had invoked the court's jurisdiction under Section 5 of the Judicature Act, he had bound himself to the procedure under the said provision which is the one applicable in England. The Plaintiff in this case has invoked the jurisdiction of the court under **Order 40** of the **Civil Procedure Rules** and not Section 5 of the Judicature Act. Likewise in the case of **<u>Republic Vs County Council of Nakuru Ex-Parte Edward Alera t/a Genesis Reliable Equipment (Supra),</u>** the same related to an order that was not in the nature of an injunction and Section 5 of the Judicature Act applied in the circumstances of that case. From the foregoing, I find that the Plaintiff's application is

properly before the Court.

13. Having discharged that preliminary issue, I now turn to the merit of the application. The Plaintiff alleged that the Defendants had defied the order issued on 13th June, 2013 and extended on 28th June 2013. The Defendants have on their part opposed the application contending that the orders were obtained in bad faith as the Plaintiff did not have the locus standi to institute the suit. They have further claimed that the Plaintiff obtained the interim orders on the basis that it had the proprietary rights over the event, a fact that in their view is not true since those rights were owned by a company known as Human Resources Boosters that is based in the Netherlands. That being the case, the issue that therefore falls for determination is whether there has been breach of the order as alleged.
14. I have seen the Replying Affidavit of the 1st Defendant and the Affidavit of Service of John Omudaga sworn on 25th June, 2013. It is clear that the 1st Defendant was aware of the orders of the Court as he complained that the Plaintiff had run an advertisement concerning the same, on the daily nation newspaper of the 16th and 28th of June, 2013. This precipitated the court on 28th June, 2013 to restrain the Plaintiff from further advertising the Order. To that extent, I find that the 1st Defendant had knowledge of the order and the issue of personal service upon him does not therefore arise. In any event, the 1st Defendant did not contest knowledge of the existence of the order. I am guided by the holding of **Lenaola J** in the case of **Basil Criticos Vs Attorney General and 8 Others [2012] eKLR** where he stated that :-

"...the law has changed and as it stands today knowledge supersedes 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"

15. However, it is not clear from the record whether the other director of the 2nd Defendant, that is, Victoria Cecilia Karanja was aware of the order of the Court. The Affidavit of Service of Mr. John Omudaga is silent on the issue. He states that on 18th June, 2013, he went to the offices of the 2nd Defendant accompanied by an officer of the Plaintiff and effected service of the order upon a lady by the name of Diana. The said Diana received the documents on the instructions of the 1st Defendant, though she declined to sign the principal copy of the process. The Plaintiff has not clarified whether the said Diana was authorized to receive process on behalf of Victoria Cecilia Karanja. What is clear is that the 1st Defendant designated Diana to receive the process on his and the 2nd Defendant's behalf.
16. Given that the 2nd Defendant is a company, the question that arises is how service of an order is to be effected upon a company if the directors of such a company are to be committed for disobedience of such an order. To my mind, in order to hold a corporation with liability for contempt, it is necessary to show that the corporation has been properly served or that service has been dispensed with on the basis that an appropriate officer of the company had knowledge of the order. In the same way, in order to hold the directors of such a corporation personally liable for breach of an order, such directors should be served with the order or it must be shown that they had personal knowledge of the same. See the case of **PAYLESS CAR HIRE AND TOURS LIMITED V IMPERIAL BANK LTD [2012]eKLR**.
17. In the instant case, it has been shown that the 1st Defendant had knowledge of the order of 13th of June 2013. However, that is not the case with the 2nd alleged contemnor. In my view, it was vital for the Plaintiff to demonstrate that Victoria Cecilia Karanja was personally served with that order or had knowledge of the same. I am guided by the fact that contempt proceedings are akin to criminal proceedings. A person may be sent to prison thereby lose his or her liberty for that offence. For that reason, it is very important that such a person is shown to have had notice of the order and had the opportunity to obey the same but failed to do so. In the instant case, it is unclear whether Victoria Cecilia Karanja had knowledge of the order or was personally served with the Order. In absence of such proof, I do not think that any good case has been made for her committal. The same however, is not the case with the 1st Defendant. He had knowledge of the order and he swore the Replying Affidavit in opposition to the application.

18. Has there been deliberate and intentional non- compliance of the Court Order? The 1st Defendant has not denied knowledge of the order. He has also not denied that the Defendants did not comply with the order. What he has done, is to go into detail in trying to establish that the Plaintiff should not have obtained the Orders in the first place. According to him, the suit is premised on the grounds that he was a former employee of the Plaintiff, a fact which he disputes, contending that he has never had any contractual relationship with the Plaintiff. He further contended that the rightful owner of the rights to the event is a company called Human Resources Boosters and not the Plaintiff as was represented to Court. The 1st Defendant also complained that the Plaintiff was out to disparage the reputation of the Defendants with a view to eliminating competition. That all stakeholders had been informed that the Plaintiff and 2nd Defendant are separate and distinct entities and were not related in any way.
19. To my mind, when a party is faced with an application for committal for alleged contempt and it is alleged that there is inexistent an order which he has disobeyed, it is incumbent upon him to defend his position. He has to show either that he was not aware of the order or his actions did not amount to breach of the order. In the instant case, I have found that the 1st Defendant was aware of the order, the order required him and the 2nd Defendant

"to refrain from passing off and carrying themselves to the general public as a sister company or associate company of the Plaintiff and to <u>further stop printing any materials or brochures in close resemblance with the Plaintiff's</u> ....."

20. In the application, the Plaintiff has produced the brochure belonging to the Plaintiff which is dominantly Green in colour. At pages 3 to 8 of **"Exhibit PPR2",** the brochure is labeled **"Human Resources Executive Symposium 2012 12, 13 & 14 September, 2012 Hilton Hotel, Nairobi Kenya."** The brochure has a logo of Human Resource Boosters and that of AMC International. At pages 9 to 14 of the exhibit "PPD3" is the brochure of the 2nd Defendant. The dorminant colour is blue. At page 9 of the exhibit, it is labeled **"2nd Executive Human Resources Symposium 2013, 4, 5 & 6 September, 2013 Laico Regency Hotel **** Nairobi, Kenya."** It has a logo of Human Resource Boosters and that of A.B.M.C International Ltd. A close look at these documents will show that the layout as well as get up of the Defendant's brochure is similar in all respects with that of the Plaintiff. To my mind, the latter part of the order of 13th June, 2013 barred the Defendants from producing brochures that resembled that of the Plaintiff. This they failed to heed.
21. Having carefully perused the Replying Affidavit, I find that all the arguments by the 1st Defendant do not address the question at hand, which is, whether there was compliance with the Court Order or any difficulty in compliance, if any. In my view, what the 1st Defendant should have done was to show that he did not disobey the court orders. This he has not. He only endevoured to show that the Plaintiff was not entitled to the order in the first place and to justify the non- compliance.
22. The standard of proof in matters of contempt of court is well settled. It must be higher than proof on a balance of probabilities, almost but not exactly beyond reasonable doubt. See the case of **<u>Mutitika Vs Baharini Farm Limited [1985] KLR 229.</u>** This is because the charge of contempt of court is akin to a criminal offence. A party may lose his liberty. In this case I have found that the Defendants have not denied that they have continued to market and organize the "2nd Human Resources Symposium" using brochures and branded items that bear a close similarity to those of the Plaintiff. This is in utter breach of the Order of 13th June, 2013. Their main contention is that the Order was irregular, given the issues raised as to ownership of the intellectual property of the event and the Plaintiff's locus standi. That argument may probably be credible. But the application to establish the legal rights of the parties on a prima facie basis is still pending. The same is yet to be determined. What is at hand is an allegation that an order issued by this court was not complied with. The explanation given by the Defendants for non-compliance thereof is that they think that the same was irregular as the Plaintiff was undeserving of the same. In my view, this is a strange argument. To answer the Defendants, I will reiterate the sentiments of Romer LJ in **<u>Hadkinson -v- Hadkinson (1952) P 285 at 288</u>** that:-

"It is 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. <u>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 even void</u>" (Emphasis added)

Further, Lord Donaldson MR said in **<u>Johnson –v- Walton (1990) 1 FLR350 at 352</u>** stated:-

> ***"It cannot be too clearly stated that, <u>when an injunctive order is made or when an undertaking is given, it operates until it is revoked on appeal or by the court itself, and it has to be obeyed whether or not it should have been granted in the first place.</u>" (Emphasis mine)***

23. To my mind therefore, a party must comply with an order whatever he thinks of such an order. What is important is that such a party has knowledge of the terms of the order. To my mind, if the Defendants were unsatisfied with the Order of 13th June, 2013, they should have attempted to get rid of the same through the proper course that is, either by setting it aside or through appeal. So long as the injunctive order exist, the Defendants are bound to obey the same to the letter.
24. Taking all the circumstances of this case into consideration, and for the interests of justice, I find that the 1st and 2nd Defendant knowingly and willfully disobeyed the orders of this Court of 13th June, 2013 as extended on 28th June, 2013 and I hereby find the 1st Defendant to be in contempt of that order.
25. I will now turn to the prayer for injunction. The Plaintiff has sought an order to restrain the Defendants from further planning, organizing, marketing and holding the proposed "2nd Executive Human Resource Symposium, 2013 on the 4th to 6th September, 2013. According to the submissions of Mr. Chege, learned Counsel to the Plaintiff, the Defendants' actions would amount to the tort of passing off as the general public and the targeted clientele of the Plaintiff would assume that the 2nd Defendant's event is a continuation of the Plaintiff's successful 2012 symposium. The Plaintiff's therefore aver that should the Defendants not be restrained from holding the event, the Plaintiff would be deprived of legally entitled income from its similarly organized symposium bearing the same name and to be held on 16th to 18th September, 2013. As I have already stated, the Plaintiff did produce the Defendant's brochures alongside its brochures marked as **"P.P.D 3"** to show that the Defendants had produced and are using the format and layout of the Plaintiff's brochure to publicize their event.
26. The Defendant on the other hand refuted the Plaintiff's claim and contended that the Plaintiff did not have the proprietary rights over the event and that the same belongs to Human Resources Boosters based in Netherlands. Counsel for the Defendants submitted that there was sufficient proof in support of this claim. This was in form of different email correspondence between the said entity and a Mr. Linderman, wherein it is stated that Human Resources Boosters were only willing to work with the 2nd Defendant company and not the Plaintiff. Further, the Defendant refuted the passing off claims and contended that all parties involved in both the planning and participation of its event, including the general public, had been notified that the 2nd Defendant was not associated with the Plaintiff Company. The Defendants also pointed out that the Plaintiff had no plans of holding its symposium on 16th to 18th September 2013 as alleged, and purportedly made brochures annexed to the application to mislead the Court.
27. I have considered the parties position in the matter. The principles governing the grant of injunctions are well known. When a litigant approaches the court for an injunction, he must rise to the threshold for grant of interlocutory relief set out in **<u>Giella Vs Cassman Brown and Company Limited [1973] E.A 358</u>**. Those principles are first, that the applicant must establish a prima facie case with a probability of success; secondly that he stands to suffer irreparable harm not compensable in damages; and thirdly, if in doubt, the court will assess the balance of convenience. In **<u>Reckitt & Coleman v Borden ('Jif Lemon') [1990] RPC 341, 499</u>** the court held that three basic elements must be established in a claim for passing off. That is, there is goodwill in the get-up of goods or services; there is misrepresentation leading the public to believe the goods supplied by the Defendant are those of the claimant and that there was damage caused by reason of the erroneous belief.
28. The question for determination therefore is whether the Plaintiff has fulfilled both the conditions

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

29. As regards the purported rights holder to the event, that is Human Resources Boosters, I find the Defendants line of argument imprudent for the simple fact that if that was the case, the said company would have been a party to these proceedings. At this stage, it is not. that company did not organize the event in 2012. It is not the one organizing the same in 2013. The 2012 event was planned, organized and executed in Kenya by the Plaintiff. The material and brochures used were those prepared by the Plaintiff. I am hesitant to believe the Defendants argument on the issue of intellectual property rights to the event since the traditional common law view that has prevailed is that it is difficult to attach 'any precise meaning to the phrase "property in a spectacle". A spectacle in this case refers to an event. A "spectacle" cannot, therefore, be "owned" in any ordinary sense of that word. See the case of **Victoria Park Racing –v- Taylor (1937) 58 CLR.** It should be noted that Human Resources Boosters has not advanced a claim to the event. That is an issue for trial.
30. Finally, since the event has been planned on the background of a breach of the injunctive order of 13th June, 2013 allowing the same to continue would be to sanction a contempt of court. That won't do. I am therefore satisfied that sufficient ground for the grant of the temporary injunction has been laid.
31. The upshot of this is that the Plaintiff's Notice of Motion dated 16th July 2013 is hereby allowed. I find the 1st Defendant to be guilty of contempt of court of the order made on 13th June, 2013. He is hereby committed to jail for 30 days effective immediately. Victoria Cecilia Karanja is discharged. Prayer 2 of the motion is allowed to last until the hearing and determination of the suit. The Plaintiff shall have the costs of the application.

Orders accordingly.

DATED AND DELIVERED at Nairobi this 29th day of August, 2013

.....

A. MABEYA

JUDGE