

No. 143/2013

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL MISCELLANEOUS (JR) NO. 5 OF 2012

NATIONAL BANK OF KENYA LTDAPPLICANT

VERSUS

COUNTY COUNCIL OF OLEKEJUADO.....1ST RESPONDENT

CONTINENTAL INTERGRATED

INDUSTRIES LTD.....2ND RESPONDENT

JAMES KAGONIA WARUI3RD RESPONDENT

RULING

1. Following my ruling dated 4th November, 2013, whereby I declined to grant leave to the *Ex-parte* applicant to institute contempt of court proceedings against the Respondents for failure to serve the Attorney General's office, the applicant has brought another Notice of Motion dated 18th November, 2013.
2. In the Motion, the applicant seeks leave to file contempt proceedings against the town clerk (or official serving in equal capacity) of Olkejuado County Council for disobeying the Order of the court dated 18th September, 2012.
3. In the said application the *Ex-parte* applicant has demonstrated that he has now complied with the requirement.
4. The application dated 18th November, 2013 is ideally identical to the one instituted on 25th October, 2013. An application for leave to institute contempt proceedings does not seek determination of a suit on merits. The principle of *resjudicata* would therefore not apply. Evidence having been tendered that the State Law Office received the notice to institute contempt proceedings, I hereby grant leave sought.
5. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 9TH day of DECEMBER, 2013.

L.N. MUTENDE

JUDGE