



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI (MILIMANI COMMERCIAL  
COURTS)**

**Civil Suit 15 of 2004**

**EUNICE SOKO MLAGUI.....APPLICANT**

**VERSUS**

**SOFTWARE APPLICATION LIMITED.....RESPONDENT**

**R U L I N G**

The plaintiff simultaneously filed an injunction application together with the plaint hereof.

In the injunction application the plaintiff sought restraining orders against the defendant company to restrain the said company from selling and or disposing of its assets. The plaintiff who is a shareholder of the defendant alleged that her co-share holders were disposing the defendant assets.

Before that injunction application could be heard interpartes parties reached a consent and filed a consent letter on 4<sup>th</sup> March 2004. That consent provided that the defendant's assets could be sold subject to a joint account between the shareholders is opened, that the sale proceeds be deposited in that account and that parties do agree on the modalities of distribution of the proceeds of sale.

The plaintiff has now moved this court by a Notice of Motion dated 26<sup>th</sup> August 2005 seeking an order for committal to civil jail of her two co-share holders, directors of the defendant company for disobeying the consent order which was adopted by the court on 25<sup>th</sup> February 2004.

The application is based on the grounds that, Suresh Thakombai Parmar and Rajinder Kumar Dadibhai Patel are the only directors, shareholders of the defendant company; that the aforesaid have disobeyed the order of 25<sup>th</sup> February 2004 in that they have failed to open the joint account; that the aforesaid have secretly sold one of the defendant's company immovable asset, namely L.R. No. 18113/72, and have kept those proceeds away from the plaintiff; that the aforesaid were served with an extracted order and the penal notice.

Mr Mageto, learned counsel for the plaintiff submitted that the said sale was revealed by a search over the property. That the same had been sold for kshs 14.5 million. The plaintiff relied on the case CIVIL APPLICATION NUMBER NAI 39 OF 1990 REFRIGERATION & KITCHEN UTENSILS LTD – AND – GULABCHAND POPATAL SHAH & OTHERS it was held in that case: -

**“...that in case of alleged contempt, the breach for which the alleged contemtor is cited must not only be precisely defined but proved to a standard which is higher than proof on a balance of probabilities but not as high as proof beyond reasonable doubt.”**

The Respondents did not file any papers in opposition. Their advocate Mr Anane stated that the Respondents are ready to purge the contempt in such a manner, as the court will order.

The court having considered the plaintiffs Notice of Motion dated 26<sup>th</sup> August 2005, the supporting affidavit and counsel's submissions finds that the application is merited.

The Respondent did not deny that they have failed to obey the order of this court and accordingly the court finds that they are in contempt of court order.

The court accordingly grants the following orders: -

**(a) THAT SURESH THAKOMBAI PARMAR and RAJINDER KUMAR DADIBHAI PATEL are hereby fined kshs 100, 0000 each, which payment shall be made within 14 days from todays date.**

**(b) That the said SURESH THAKOMBAI PARMAR and RAJINDER KUMAR DADIBHAI PATEL shall facilitate the opening of a joint account with the plaintiff and shall deposit the sale proceeds of kshs 14.5 million thereof within 14 days and in default they shall be committed to jail for six months.**

**(c) That plaintiff is awarded the costs of the Notice of Motion dated 26<sup>th</sup> August 2005.**

**MARY KASANGO**

**JUDGE**

Dated and delivered this 28<sup>th</sup> April 2006

**MARY KASANGO**

**JUDGE**