REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

Misc Civ Appli 649 of 2006

REPUBLIC …… APLICANT

VERSUS

GOVERNOR, CENTRAL BANK OF KENYA ……..…… 1ST RESPONDENT

ROSE DETHO ……..…… 2ND RESPONDENT

MOMANYI BUNDI ……...…….…… 3RD RESPONDENT

AND

CHARTERHOUSE BANK LTD …… 1ST INTERESTED PARTY

SANJAY SHAH……..… 2ND INTERESTED PARTY

EX-PARTE.....RATILAL AUTOMOBILES LTD

MAHESH TAILOR

GEMINI TAILOR AND

PRAMUKH ENTERPRISES (KSM) LTD

RULING

AUTOMOBILES LTD., MAHESH TAILOR, GEMINI TAILOR, and PRAMUKH ENTERPRISES (KSM) LTD moved this court on 15/9/2006 in an application against the Central Bank of Kenya ("CBK"), Rose Detho ("Detho"), the Minister for Finance ("Minister"), Kenya Bankers Association ("KBA") and Kenya Revenue Authority ("KRA") who were named as the 1st to 5th respondents respectively, with Charterhouse Bank Limited ("the bank"), Depositors of Charterhouse Bank Limited ("the depositors") and Sanjay Shah ("Shah") appearing as the 1st to the 3rd interested parties respectively. They sought several orders under Order LIII of the Civil Procedure Rules and after taking their counsel's submissions into account, I granted them the following orders inter alia, against the specified respondents:

"(a) An order of MANDAMUS to compel the 1st, 2nd and 4th Respondents to allow the Applicants to access and operate their bank accounts Nos. CA-01-000036, SB-01-000459, CA-09-000032 and CA-600260 held at 1st Interested Party.

(b) An order of MANDAMUS to compel the 2nd Respondent to accept the Applicants' payments to third parties by way of cheques and also to allow or receive cheques from third parties to the Applicants' accounts.

(c) An order of MANDAMUS to compel the 1st, 2nd 3rd Respondents their servants and/or agents to produce and/or bring unto the Honourable court all evidence, facts, reasons, information and documents upon which they relied on in taking the decision and action adverse to the interests of the Applicants including those of the 1st and 2nd Interested parties and/or for recommending the withdrawal and/or closure of the said 1st interested party.

(d) An order of MANDAMUS to compel the 1st Respondent to bring unto the Honourable Court all its inspection reports and recommendations thereof arising out of inspections and or audit carried out since 1999 to date.

(e) An order of MANDAMUS to compel the 1st Respondent to bring unto the honorable court all its recommendations to the 3rd respondent for the renewal of the 1st interested party's licenses with effect from 1999 to date.

(f) An order of MANDAMUS directed at the Respondents jointly and/or severally, to compel the Respondents, their servants or agents and/or each of them to produce before the court for purposes of scrutiny or directions the alleged investigation or inspection reports relating to the 1st Interested Party by the 1st Respondent the basis of its purported act of appointing the 2nd Respondent.

(g) An Order of MANDAMUS directed at the Respondents jointly and/or severally to compel the Respondents, their servants or agents and each of them to produce before the Honourable Court for the purpose of scrutiny as to the truthfulness in respect of allegations of offences of money laundering, scamming of 18 billion shillings made against the 1st Interested Party by the 1st Respondent, its servants, and/or agents.

(h) An order of MANDAMUS directed at the 1st, 2nd, 3rd and 5th Respondents jointly and severally to compel them their agents, servants, consultants, inter-agency, task force, due diligence team and/or any other person involved in the said conspiracy to the court for scrutiny any and/or to produce all the reports, memos, letters, demands and/or memorandum allegedly implicating the 1st Interested Party and/or the Applicant herein or any other depositor or client with criminal activities.

(i) An order of MANDAMUS directed against the 4th Respondent compelling them, their servants or agents to produce before the Honourable Court for scrutiny any evidence of any wrong doing by the Ex parte applicants and/or the 1st Interested party to warrant t he withdrawal and suspension of the 1st Interested Party from the Clearing House.

(j) An order of MANDAMUS directed at the Respondents jointly and/or severally, to compel the respondents, their servants or agents or each of them to produce before the court for purposes of scrutiny or directions the alleged investigation or inspection reports relating to the 1st Interested Party by the 1st Respondent the basis of its purported act of appointing the 2nd Respondent.

(k) An order of MANDAMUS compelling the 1st and 2nd Respondents to issue a certificate, letter and/or and or any other document sufficiently absolving the 1st Interested party from the allegations which have been leveled against the 1st Interested Party through adverse publicity and the said certificate, letter or

documents to be made forthwith as the 1st Interested Party requires to clear its status with its international and local customers.

(l) An order of MANDAMUS to compel the 2nd Respondent to return all the Applicant's 1st and 2nd Interested Party's funds from the 1st Respondent to the 1st Interested Party's premises and to also return any documents, correspondence, reports, stationery and or data and to regularize any signature changed which if not done will continue to cause the Applicant and the 1st and 2nd Interested parties untold suffering.

(m) An order of MANDAMUS to compel the 1st, 2nd and 3rd Respondents to bring unto the Honourable Court any report, investigation, the closure, withdrawal, removal of management and/or board members and/or which is in any way against the Applicants and/or the 1st and 2nd Interested Parties.

(n) An order of MANDAMUS to compel the 1st, 2nd and 3rd Respondents to comply and adhere to the rules of natural justice in performance of their statutory duty including in their decision making process.

(o) An order of MANDAMUS directed at the 1st Respondent compelling them to clear the 1st Interested party from involvement in any criminal activities and tax evasion or illegal transfers of money from Kenya and to declare whether the 1st Interested party is involved in any criminal offence of money laundering in any way.

(p) An Order of MANDAMUS to compel the 5th Respondent to return to the 1st Interested Party all the documents, data and or information illegally collected, removed or obtained relating to the applicants and or the 2nd Interested Parties including those of other depositors and creditors.

(q) An order of CERTIORARI to bring before the Honourable Court for the purpose of quashing any authority, decision and/or order made by the 1st and 3rd Respondents for placing the 1st Interested Party under statutory management and or appointing statutory manager.

(r) An order of CERTIORARI to quash the decision of the 4th Respondent from stopping or blocking the 1st Interested Party from participating and/or transacting at the Clearing House.

(s) An order of CERTIORARI to bring before the Honourable Court for the purpose of quashing any authority, decision and/or order made by the 1st respondent, its agents, servants or contractors, whether jointly or severally purporting any impropriety by 1st Interested Party.

(t) An order of CERTIORARI directed to the 1st, 2nd and 3rd Respondents including their servants and/or agents to bring any decision, report and/or recommendations into the Honourable Court made against the Applicants or the 1st and 2nd Interested Parties to be quashed.

(u) An order of CERTIORARI directed to the 1st, 2nd and 3rd Respondents to bring into the Honourable Court for purposes of being quashed, Gazette Notices Nos. 4935, 4936 and 4937 of 30/6/2006 and any other notices published to the detriment of the Applicants and or the 1st and 2nd Interested parties.

(v) An order of CERTIORARI to compel the 5th Respondent to bring unto the Honourable Court any report, assessment, demand, decision and or action against the Applicant and/or the 2nd Interested Party made as a result of the illegal activities above-stated herein to be quashed.

(w) An order of CERTIORARI to bring before the honorable Court for purposes of being quashed the purported appointment of the 2nd Respondent as Statutory Manager of the 1st Interested Party by the Respondents jointly and severally.

(x) An order of PROHIBITION to prohibit the 2nd Respondent from exercising any functions or powers and or interfering with the business and operations and or management the 1st Interested party as a Statutory Manager appointed by the 1st Respondent.

(y) An order of PROHIBITION to prohibit the Respondents jointly and or severally now or in the future, from interfering with the, management or running of the 1st Interested Party within compliance with the provisions of the Banking Act or the Central Bank of Kenya Act.

(z) An order of PROHIBITION to prohibit the 1st Respondent and the 3rd Respondent from refusing to grant the 1st Interested Party a certificate confirming its operation status and its liquidity and the usual requirement by correspondent banks and all other interested parties.

(aa) An order of PROHIBITION to prohibit the 4th Respondent jointly or severally, servants or agents from refusing the 1st interested party in any way from transacting at the Clearing House and or from interfering with the 1st Interested Party use of the Clearing House facilities.

(bb) An order of PROHIBITION to prohibit the 2nd Respondent from adversely exercising any functions or powers and or interfering with the business and operations and or management of the 1st Interested Party as a Statutory Manager appointed by the 1st Respondent.

(cc) An order of PROHIBITION to prohibit the 5th Respondent from investigating, accessing, auditing, demanding and or demanding anything or matter taking any action or making any report against the Applicants and/or the 2nd Interested Party or to continue using any of the said illegally and unlawfully obtained documents, data and/or information.

(dd) An order of PROHIBITION to prohibit the 1st, 2nd and 3rd Respondents from giving and/or to continue giving out to any third party any confidential documents and/or information adverse to the Applicants and/or the 1st and 2nd Interested Party in any way or manner whatsoever.

(ee) An order of PROHIBITION to prohibit the 1st, 2nd and 3rd Respondents from withdrawing the 1st Interested Party's License or in any way interfering with the said license in any manner whatsoever under the provisions of the Banking Act and/or to refuse its renewal or to make any further adverse decisions and/or in any manner interfere with the 1st Interested Party's Board of directions and or its management whatsoever.

(ff) An order of PROHIBITION to prohibit the Respondents jointly and or severally, now or in the future, from interfering with the management or running of the 1st Interested Party without compliance with the provisions of the Banking Act or the Central Bank of Kenya Act".

The leave which I granted was to operate as stay in terms which I will spell out later in this ruling.

The four who I shall hereinafter refer to as the 1st to the 4th ex-parte applicants respectively, are now back in court in an application taken out against the Governor of the Central Bank of Kenya ("the Governor"), Detho and Momanyi Bundi ("Bundi"), who I shall otherwise refer to as the 1st to 3rd respondents respectively. They seek the following orders:

"1. The Respondents jointly and/or severally be committed to civil jail for a term not exceeding six months for contempt of the orders of this Honourable Court issued on 15th September 2006.

2. That the assets of the Respondents jointly and/or severally be attached for contempt of the court."

Their learned counsel Mr. Nyairo relied on several grounds but mainly that the three have defied orders of

this court, and he thus laid emphasis on affidavits by the ex-parte applicants and by one S. N. Macharia ("Macharia") who is a court process server, and it was his submission that the bank was denied entry even after the orders were served; that the 4th ex-parte applicant's requests for transactions to be undertaken on his behalf were declined, and that in the circumstances the respondents should be held in contempt and punished accordingly.

It was also his submission that the only thing that the court needed to satisfy itself at this stage is whether the three respondents were aware of the order, and in this connection he relied on Order 45 rule 7 of the Supreme Court Practice Rules (SCPR), to support his contention that service need not necessarily be personal if the court is satisfied that a person has tried to evade service; that the fact that he has notice of the order would suffice.

The respondents oppose the application on the basis of the fact that notices were not issued to the Attorney General prior to the commencement of these proceedings. Miss Kimani and Mr. Ougo who appeared for the Attorney General, the 1st and 2nd respondents respectively were of the view that the Attorney General must be served with notices in these types of applications, as the matter is quasi-criminal. Mr. Ougo relied on Kiunjuri V. Mwangi & others – HCCC No. 1333 of 2003**.**

Mr. Nyairo was however of the view that section 5 (1) of the Judicature Act, merely restates the position, that it does not import the procedure; that the procedure in England is not applicable in Kenya and we therefore need not adhere strictly to the requirements of the SCPR of England and in which instance, Kiunjuri's case where Nyamu J. observed and rightly so, that "*in the majority of contempt applications arising from civil cases, it is individuals who have instituted contempt proceedings without any interference from the Attorney General"*, but he was of the view that the issue of notice was not addressed by advocates in their submissions, for had the court addressed itself adequately, it would have reached a different conclusion He also acknowledged the fact that "*the court can on its own motion initiate contempt proceedings in cases of alleged criminal contempt"*.

Order 52 rule 2 (3) of the SCPR provides that "*The applicant must give notice of the application not later than the proceeding day to the Crown office and must at the same time lodge in that office copies of the statement and affidavit"*.

I have considered this issue and would not want to believe that wherever the issue of contempt arises the Attorney General has to be notified in advance. Though in England the Crown office should be notified under the SCPR that would not appear to be a requirement under our laws, for had it been the case, all applicants for leave to commence proceedings for Judicial review orders would have to issue notices to the Attorney General. I say so because a perusal of the S.C.P.R would show that one is required to issue notices to the Crown office for leave to commence proceedings for Judicial Review. Indeed Paragraph 53/3 (1 & (2) Supreme Court Practice 1993 Vol.1, on "Grant of leave to apply for Judicial Review" provides that:

"(1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.

(2) An application for leave must be made ex parte to a Judge by filing in the Crown Office-

(a) a notice in Form No. 86A containing a statement of

(i) the name and description of the applicant,

(ii) the relief sought and the grounds upon which it is sought,

(iii) the name and address of the applicant's solicitors (if any) and

(iv) the applicant's address for service; and

(b) an affidavit which verifies the facts relied on."

I am of the view that the use of the word 'Crown' in both rules of the SCPR, clearly demonstrates that in Kenya, since notices under Order LIII shall be given to the Registrar of the High Court and in that context, a Deputy Registrar of this court, it would follow that a notice to the Registrar or his Deputy in contempt proceedings would suffice.

But even if I am wrong in the above finding, the Chief Litigation Counsel, appeared in court and successfully applied for the Attorney General to be enjoined in the matter as an amicus curiae and she addressed the court very ably and it was quite obvious that the Attorney General was well represented.

Though, it was Miss Kimani's view that the interested parties should not participate in this application, it was obvious both Mr. Ken Odera and Mr. Bhalla learned counsel for the bank and Shah respectively, did not have much to say save that they supported Mr. Nyairo and reiterated that the rule of law must be adhered to.

Be that as it may, Miss Kimani conceded that the rule of law and recognized that rules of procedure are important; they must be adhered to for the sake of ensuring that justice is done for all. She was however of the view that the application is defective in that though five parties were named as respondents, in the application for leave to commence the proceedings for Judicial Review herein, only some of the respondents were named in this application, which renders the application an abuse of the process, and she relied on Ex-parte Virash Cash & Carry & fourteen others V Minister for Finance and Kenya Revenu**e** Authority HC. Misc. A. 288/2005 at page 20, where Mwera J. found that the number of applicants had grown from a mere 14 to a whooping six hundred during the hearing. It is clear and it is conceded by the ex-parte applicants that in the initial application the respondents were CBK, Detho, the Minister, KBA and KRA, it would appear the respondents in this matter are officers of the CBK and the Statutory Manager.

It was her submission that the court must be satisfied that a party has deliberately disobeyed court's order; that deliberate evasion of service must be proved; that mere suspicion is not sufficient, nor is presumption of evasion sufficient proof. She urged the court to adopt the decision by Nyamu J. as good law. Mr. Ougo supported her contention and was also of the view that a notice with penal consequences requires a high standard of proof, which would be similar to standards required in criminal cases, and he referred Supreme Court Practice Rules 1988 Vol. 1 paragraph 52/4/4 where it is provided that the appropriate standard of proof to be applied in committal proceedings is the criminal standard of proof and that not only would the applicants be required to prove the charges beyond all reasonable doubt, but that the benefit must be given to the respondents, and though it would appear that even Mr. Nyairo seemed to subscribe to that notion, I am of a different view and I would emphasise that the standard need not be that high, for this are not criminal proceedings per se. indeed, when faced with a similar situation, the Court of Appeal held that "*the standard of proof in contempt proceedings must be higher than proof on a balance of probabilities, and almost, but not exactly, beyond reasonable doubt as it is not safe to extend the latter standard to an offence which is quasi criminal in nature. The guilt of the contemnor has to be proved with such strictness of proof as is consistent with the granting of the charge"* (Mutitika Vs Baharini Farm Ltd., [1985] KLR 226). The Court relied on Acrow v. Rex Chainbelt Inc [1971] 3 ALL ER 1175 at page 1180, and they were of the view that the standard set in English cases; of proof beyond reasonable doubt is much too high for an offence "*'of a criminal nature', and ipso facto, nor a criminal offence properly so defined, and that the standard of proof beyond reasonable doubt ought to be left where it belongs; to wit, in criminal cases; that it is not safe to extend it to offence which can be said to be quasi criminal in nature"*. The decision which I find safe and which is binding on me will, needless to say, apply to these particular proceedings.

I have considered the issue of service and Mr. Ougo's submissions, and it can not be gainsaid that it is a requirement that service must be personal. It is also a requirement that the order must have a penal notice. Mr. Ougo was of the view that the penal notice must refer to a specific person by name and in this connection, he relied on Rep V. Commissioner of Lands ex-parte Gachira Msc. Application No. 149/2002**,** in which Nyamu J. reiterated that procedures have to be strictly adhered to in contempt

applications. Mr. Nyairo was however of the view and I am inclined to agree with him, that there is no requirement for any specific words to be used. He was also of the view that their notice was clear and that it passed the relevant message. I have looked at the notice which was appended to the order and I am satisfied that not only was it clear but that the recipient was made well aware of what consequences faced him should he fail to comply with the said order.

Mr. Ougo challenged the legality of the order, which his clients are alleged to have breached and it was his submission that this court lacked the jurisdiction to issue it and though he conceded that an order of stay could be granted, he was however of the view that the order against intended action being, which he viewed as an order of injunction could not be granted, and that in any event, the 1st and 2nd interested parties should not have been granted the orders nor could they benefit there from as they were not the applicants, which was a further indicator that the order was issued in excess of jurisdiction; that contempt cannot be founded on an order grounded without jurisdiction; that where the issue of jurisdiction is raised, it must be dealt with before any other proceedings take place and in this connection he relied on Gordon V. Gordon [1904-1907] All ER 702 – at page 705, in which the court was of the view that "*where an objection is to the legality of the order, it would not be right to allow an order to be enforced without first determining the question of legality"*. Though Mr. Nyairo was of the view that the order of stay did not exceed this court's jurisdiction and I am inclined to agree with him that an order of stay does have the effect of an injunction, because it prohibits action of further action, but it does not become an injunction just because it has that effect, further, an order of stay is directed at decision making bodies, as was indeed the gist of the holding in **R**. Vs Secretary of **St**ate for Education ex-parte Avon County Council at page 285 paragraph (h) – page 286 (a) where the court held that "*the grant of a stay would not nullify the statutory provisions under which the order was made but order of stay would merely have the effect of deferring the date for the implementation of proposals until the Judicial Review proceedings were concluded"*, it is however important to note that after its finding in Gordon V. Gordon, the court then proceeded to hear the appeal, but it is clear that this is not the appellate stage, and it is my humble opinion, that a party cannot just choose to ignore an order on the basis of the fact that he believes that it is 'illegal' or that the court acted in excess of it's powers when granting the order, without preferring an appeal, or if he has indeed preferred one, without obtaining an order of stay of proceedings from the Appellate Court. Orders of the court must be adhered to until they are set aside. I thus form the opinion that the issues raised in the preliminary objection are issues which would have been adequately canvassed at the hearing of the substantive application and not within an application such as the one which is before me, and I would dismiss that ground for want of merit.

Mr. Chacha Odera for Bundi, was of the view, and I agree with him that his client who was not a party to the application for leave to commence an application for Judicial review, could not be held liable in any way as no orders had been issued against him, and that in any event, he was not served with an order with a penal notice, and I readily agree with him for "*no order of Court requiring a person to do it abstain from doing any act may be enforced unless a copy of the order has been served personally on the person required to do or to abstain from doing the act in question. The copies of the order served must be endorsed with a notice informing the person on whom the copy is served that if he disobeys the order, he is liable to the process of execution to compel him to obey it. This requirement is important because the court will only punish as contempt a breach of injunction if satisfied that the terms of the injunction are clear and unambiguous, that the defendant has a proper notice of the terms and that breach of the injunction has been proved beyond reasonable doubt. As a general rule, no order of the court requiring a person to do or abstain from doing any act may be enforced unless a copy of the order has been served personally on the personally required to do or abstain from doing the act in question …… where an order is made against a company, the order may only be enforced against an officer of the company if the particular officer has been served personally with a copy of the order ……*" (Halsbury's Laws of England Vol. 9 4th Edition).

I am also convinced that the Governor cannot be held liable for contempt either as she was not a party to the initial proceedings in which the orders were obtained, Needless to say, there is a distinction between her and CBK, which is a body corporate; it was a party to the application for leave, and it could have been cited yet there is no reason why it was not cited.

I would in the circumstances dismiss the application against the two.

I have perused the affidavit of service with a view to establishing whether it can be said that Detho was served. Macharia deposed on 26/9/2006 that he had served the Order of 15/9/2006, together with the related documents in the following manner:

A – On CBK

4. "THAT on 20th September 2006, I proceeded to Central Bank of Kenya Eldoret Branch where after security check I was allowed inside and met the receptionist who after introducing myself and explaining the purpose of my visit called the Manager in charge who sent the Security Manager a Mr. Okara."

5. "THAT Mr. Okara took the court documents to the said Manager in charge."

6. "THAT the said Manager in charge who did not introduced (sic) himself came with the court documents and informed me that I was wasting my time and ordered me out of their office threatening me with arrest."

7. "THAT the said Manager in charge despite my plea declined to acknowledge service with (sic) the court documents aforesaid."

B – On CBK

4. "THAT on 21st September 2006, I proceeded to the Central Bank of Kenya Head office where after security check I was allowed inside and met the receptionist who after introducing myself and explaining the purpose of the my visit called the legal Manager who came to the reception."

5. "THAT the Legal Manager, Mr. Mutava, confirmed that he had the authority to receive the court process on behalf of the 1st respondent whereby he accepted service by stamping and signing at the back of the return copy."

C – On Detho

4. "THAT on 21st September 2006 I went to Charterhouse Bank Limited, the 1st Interested Party which is at Longonot Place 6th Floor along Kijabe Street Nairobi with my mission being to serve the 2nd respondent, Ms. Rose Detho the Bank's Statutory Manager and for her to receive the court's process on behalf of the 1st and 2nd Interested Party (sic)."

5. "THAT I did not find her at Charterhouse Bank Limited but I was advised that she was sitting at Central Bank of Kenya but I found her Assistant Mr. Jimmy Muiwa who attended me (sic) and after I explained the purpose of my visit, he informed me that he had to firstly consult with his seniors first."

6. "THAT there was a Police officer by name of Abdi Bakari who was performing security duties at the Bank and who commanded Mr. Jimmy Muiwa not to sign or accept anything."

7. "THAT Jimmy Muiwa acknowledged receipt but declined to sign citing reasons that he had no authority to sign any documents."

It is evident that he was threatened when he went to effect service. It is also evident form the pleadings that Detho was stationed within the very premises which he could not access. I form the opinion that Macharia he did his best in the circumstances and that he effected service in an acceptable manner. It is therefore clear that Detho has evaded service; that she had knowledge and that she was well aware of the order and the appended penal consequences, and in the circumstances there was no need for the applicants to make a formal application be made to court before the dispensation of personal service of the order The position as regards service of such orders was considered by the Hon. Justice E. Gicheru, who was of the

view that "*a common legal problem relating to the enforcement of contempt of court is the impact of lack of service of the court order on the defendant. Many Judges have felt unable to find defendants guilty of contempt on the ground that the order and a notice of penal consequences had not been served personally on the defendant. The rules regarding the proper means of bringing the terms of an injunction to the notice of the defendant are enumerated in Order 45 rule 7 of the Rules of the Supreme Court. The general rule is that no order can be enforced unless a copy of the order has been served personally on the person required to do or refrain from doing a specified act and a penal notice must be endorsed. However, paragraph 7 of this rule provides an escape route where the court has power to dispense with service of the requisite documents in order to found an order of committal for disobedience of an order requiring him to do a given act within a given time, if he has had notice and is evading service thereof*" **(**On Independence of the Judiciary, Accountability and Contempt of Court).

It is on record that when Mr. Kuloba appeared before me on 15/9/2006 on behalf of the ex parte applicants, he sought an order to stay "*the transfer of funds from the 1st respondent …….. or is adversely against the applicants 1st and 2nd interested parties*", and it was clear to me that he had by then abandoned his prayer for stay of the placing of the 1st interested party under statutory management and the appointment of the 2nd respondent as a statutory manager, and in the circumstances, the statutory manager would remain in place save that she would be required to comply with the order which this court proceeded to issue, which was an order of stay which would operate "*as stay of the transfer of the funds from the 1st Interested Party to the 1st Respondent, the withdrawal/suspension of the 1st Interested Party from the Clearing House and/or any decision, action and report made pending and/or intended by any of the Respondents herein, and or their servants or agents which in anyway affect the rights, interest and or is adversely against the Applicants, 1st and 2nd Interested parties pending and until the determination of the suit/Judicial Review Application*", and further as a "*stay against any decision, action, investigation, demand, audit, report/s, recommendations, whatsoever and/or refusal to renew the 1st Interested Party's license or any action herein-mentioned as against any of the 2nd Interested Party by any of the Respondents whatsoever until the determination of the application.*"

Detho does not deny that she was aware of the court order; It is on record, and I note that Detho has deposed and confirmed as follows: "I categorically state that neither I nor the first respondent has made any decision, taken any action, made any reports, investigation, audit or recommendation of or concerning the first interested party after the 15th day of September 2006", and though she concedes so, it is however clear that her officer declined to deal with the ex parte applicants requests pertaining to the bills of exchange, which they chose to return without transmitting it to the relevant authorities for clearing, a fact which though deponed on by the 4th ex parte applicant, was not controverted.

I do therefore find that she acted in contempt of court and do order that she regularizes her position within the next thirty six hours otherwise she stands to suffer imprisonment for six months.

The costs of this application shall be in the cause.

Dated and delivered at Eldoret this 24th day of November 2006.

JEANNE GACHECHE

JUDGE

Delivered in the presence of:

- Mr. Omollo holding brief for Mr. Ougo for the 1st and 2nd respondent and also for Mr. Chacha Odera for the 3rd respondent

- Mr. Nyairo for the ex-parte applicants and also holding brief for Mr. Ken Odera for the 1st interested party and also for Mr. Bhalla for the 2nd interested party.

- No appearance for the Attorney General