



IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D. S. MAJANJA J.

CIVIL CASE NO. E828OF 2020

BETWEEN

ORGANIC FOR ORPHANS INTERNATIONAL..... 1ST APPLICANT

DALE PATRICK BOLTON..... 2ND APPLICANT

LINDA BOLTON.....3RD APPLICANT

ORGANIC FOR ORPHANS.....4TH APPLICANT

AND

BOAZ ODUOR OGOLLAH.....1ST RESPONDENT

DOUGLAS KINAIBEL.....2ND RESPONDENT

KRAIDO MAJUNE T/A KRAIDO & CO. ADVOCATES.....3RD RESPONDENT

RULING

Introduction and Background

1. The Applicants have filed an application dated 10th September 2020 made, inter alia, under **section 10 (3) & (4)** of the **High Court (Organization and Administration) Act, 2015, Rule 3(1&2)** of the **High Court (Practice & Procedure) Rules** made under the **Judicature Act** mainly seeking to have the Respondents committed to civil jail for willfully disobeying the decree issued by this court on 13th July 2020.

2. The application is supported by the affidavit of Ambrose Lemaiyan Mootian, the 1st Applicant's Chief Executive Officer, sworn on 10th September 2020. The 1st and 2nd Respondent have opposed the application through their respective affidavits sworn on 5th October 2020 while the 3rd Respondent relies on the affidavit of Majune Kraido, an advocate in the firm, sworn on 1st October 2020. The application was canvassed by way of written submissions with the parties advancing their respective positions.

3. This matter was originated by the Applicants' application dated 7th July 2020 seeking recognition and enforcement of a Final Arbitral Award, Further Award and Award on Costs published on 27th January 2020, 23rd March 2020 and 15th May 2020 respectively under **section 36** of the **Arbitration Act**. The reference to arbitration arose as a result of the dispute between the Applicants on one part and the 1st and 2nd Respondents on the other. The pith and substance of the dispute was control of the 1st Applicant. The 2nd and 3rd Applicant asserted that they were its founders and bona fide officials while the 2nd and 3rd Defendants claimed that they were the bona fide officials. The Arbitrator ruled in favour of the Applicants.

4. On 13th July 2020, I allowed the application and consequently, the court issued a decree dated 22nd July 2020 ("the Decree"). The terms of the Decree are as follows:

1. *THAT the final award published on 27th January 2020, the Further Award published on 23rd March 2020 and the award on*

costs published on 15th May 2020 and filed herewith be and are herewith recognised by this Honourable Court as binding on the parties and the same to be given a serial number in the Commercial Register of this Honourable Court.

2. THAT this Honourable Court be pleased to grant leave to leave for the enforcement of the said arbitral award herein as a decree of the Court in the terms of the draft Decree annexed to the affidavit of Ambrose Lemaiyan Mootian and marked as "ALM8".
3. THAT the costs of the application be provided awarded to the Claimant/Applicant.
4. THAT a declaration is hereby made that the Founders of the 1st Claimant are the 2nd and 3rd Claimants with the 1st Respondent as their paid agent undertaking registration on their behalf
5. THAT a declaration is hereby made that the 1st and 2nd respondent were employees of the 1st Claimant whose services were already terminated
6. THAT declaration is hereby made that the changes of the Constitution of Organics 4 Orphans International and introduction of New Board Members to the said organization done pursuant to or to give effect to the minutes of a purported meeting dated 25th July 2018 are invalid null and void.
7. THAT a declaration is hereby made that the meetings purportedly convened on 24th October 2018, 13th November 2018 and 7th December 2018 were not convened and held in accordance with the Constitution of the 1st Claimant Organics 4 Orphans and the resolution emanating therefrom are null and void.
8. THAT a declaration is hereby made that the 1st Claimant, Organics 4 Orphans International is the beneficial owner of the motor vehicle registration number KCF 914P and the 1st Respondent Boaz Oduor Ogolla though registered as owner holds it in trust for the 1st Claimant, Organics 4 Orphans International
9. THAT a declaration is hereby made that the 1st Respondent, Boaz Oduor Ogolla within 30 days from the date of service of this order on him to transfer the said motor vehicle to Organics 4 Orphans International or its nominee.
10. THAT a declaration is hereby made that the parcels of land known as L R 2116/XVIII/947 (IR No. 43777) and LR NO. 2116/1090 (LR No. 57922) belong to the 1st Claimant.
11. THAT an order be and is hereby made that the 1st Respondent releases the original Certificates of Title for the parcels of land known as LR 2116/XVIII/947 (IR No. 43777) and LR No. 2116/1090 (LR 57922) to the 2nd and 3rd Claimants or their nominee within 30 days from the date of service of this order.
12. THAT an order is hereby made permanently restraining the 1st and 2nd Respondents from accessing the Organics 4 Orphans Training Centre at Milimani Estate Kitale on L.R.2116/XVU1/947 (L.R.No.43777) and Eden Guest House on L.R.NO. other 2116/1090 (I.R.No.57922) or exercising control over the Said properties or in any way interfering with the operations and projects of Organics 4 Orphans International.
13. THAT an order is hereby made that the 1st and 2nd Respondents pay costs of the Arbitration Reference taxed at Kenya Shillings Two Million Sixty Nine Thousand, Seven Hundred and Twenty Five Only (Kshs. 2,069,725).

The Applicants' Case

5. The Applicants case is that despite service and knowledge of the existence of the arbitral awards and the Decree, the Respondents have continued to interfere with the affairs of the 1st Applicant including filing cases in the organization's name and appointing the 3rd Respondent to represent the 1st Applicant in this matter knowing well that by virtue of the Decree they have no authority to do so. They contend that following this fraudulent appointment, the Respondents have now purported to file a consent varying the terms of the decree.
6. The Applicants contend that despite being granted a chance to purge this contempt, the 3rd Respondent, an Advocate and officer of this Court who has been served and is aware of the Decree, has blatantly declined to do so. They claim that the Respondent's actions have been very disruptive of the 1st Applicant's operations.
7. Counsel for the Applicants submits that the Respondents be committed to civil jail for willfully disobeying the Decree as they were served virtually on 14th September 2020 and personally on 15th September 2020. Counsel submits that despite service and knowledge of the Decree, the Respondents have not complied with the terms of the Decree and have actually taken positive actions to subvert it.
8. According to counsel, some of the actions taken to subvert the Decree include attempting to irregularly vary and or set aside the Decree which clearly demonstrates that they are aware of the existence of the Decree. Further, that the 1st and 2nd Respondents have failed to obey the positive orders requiring transfer of vehicles and delivery of certificates of title to property. Counsel submits that the purported appointment of the 3rd Respondent by the 1st and 2nd Respondents as Advocates for the 1st Applicant contravenes the Decree which declares them previous employees of the 1st Applicant hence lacking capacity to instruct counsel to represent their former employer, the 1st Applicant.

9. The Applicants also accuse the Respondents of filing and prosecuting suits in other Courts under the name of the 1st Applicant without capacity including *Kapenguria High Court Case NO. 2 OF 2020, Organics 4 Orphans International v Thrive for Good Foundation, Dale Patrick Bolton, Linda Bolton, Steve Pippin, Dawson Mudenyo, Ambrose Mootian, Scola Nduku Munyao t/a Munyao-Kayugira & Company Advocates and Morris Mutua Kimuli t/a M. M. Kimuli and Company Advocates*. The Applicants depone that the 1st and 2nd Respondents raided the 1st Applicant's premises on 10th August 2020 where they stole the 1st Applicant's money from the safe, its Computers, vandalized property and harassed the 1st Applicant's employees despite the clear terms of the Decree.

10. Counsel for the Applicants submits that the Respondents have failed and refused to purge the contempt despite being requested to do so. Counsel urged the court to allow the Applicants' application and exercise its power to punish the Respondents who are in contempt of Court orders so that the rule of law and administration of justice is not undermined.

The 1st and 2nd Respondents' Case

11. The Respondents dispute the capacity of Ambrose Lemaiyan Mootianto present the application on behalf of the 1st Applicant and the capacity of the firm of *Munyao-Kaygira & Co. Advocates* to represent the 1st Applicant. They also deny that the 2nd and 3rd Applicants are directors of the 1st Applicant. In the circumstances they contend that the court cannot proceed with the application.

12. The Respondents depone that from the pleadings and order in *Kapenguria HCCC NO.2 OF 2020*, Ambrose Lemaiyan Mootian, Scola Nduku Munyao and Morris Mutua Kimuli respectively were barred from holding out to any court or tribunal or purporting to be advocates retained by the 1st Applicant and representing the 1st Applicant in *Kitale CMC Cr. Case No.5585 of 2018, Kitale CMC Cr. Case No. 1028 of 2019* and *Kitale ELC Case No.3 of 2020* or in any other matter civil or criminal filed or to be filed in any other court or tribunal, or otherwise, pending hearing of the suit. That although the firm of *Munyao-Kaygira & Co. Advocates* filed an application on 13th August 2020 and managed to get stay orders issued by Chemitei J., which orders were to be extended by Omondi J., on 19th August 2020, they lapsed on 23rd September 2020 as the court was not sitting on the date scheduled for hearing. As a result, the 1st and 2nd Respondent submit that the firm of *Munyao-Kaygira & Co. Advocates* cannot represent the 1st Applicant.

13. Counsel for the 1st and 2nd Respondents submit that the application herein was filed in bad faith as *Munyao-Kaygira & Co. Advocates* and Ambrose Lemaiyan Mootian failed to disclose to this court that the issue of representation and officials of the 1st Applicant herein was being canvassed at *Kapenguria HCCC NO.2 OF 2020* and that the said suit at Kapenguria was filed on 8th June 2020 before the application herein and that it would be in the interests of justice that this matter is stayed pending the hearing and determination of the suit in Kapenguria.

The 3rd Respondent's Case

14. Mr Kraido contends that he has been instructed by the bona fide current Board of Directors of the 1st Applicant as evidenced by the resolutions of the bona fide officials whereupon he filed a Notice of Appointment of Advocates to act for the 1st Applicant because he understood that the law firm of *Munyao-Kayugira & Co. Advocates* had never been retained by the 1st Applicant by the bona fide Board of Directors of the 1st Applicant. Mr Kraido adds that the said firm of *Munyao-Kayugira & Co. Advocates* has all along been retained by the 2nd and 3rd Respondents whose interests are adverse to the interests of the 1st Applicant and that the 2nd and 3rd Applicants were removed from the management of the 1st Applicant by Order or directive of the NGO's Coordination Board.

15. Mr Kraido avers that the 2nd and 3rd Applicants have founded an organization known as THRIVE FOR GOOD FOUNDATION in Canada and fronted its Chief Executive, Ambrose Lemaiyan Mootian, to dishonestly take possession of 1st Applicant's assets. That the 1st Applicant has filed *KITALE ELC CASE NO. 3 OF 2020* and *KAPENGURIA HCCC NO.2 OF 2020* against the 2nd and 3rd Applicants and others including Ambrose Lemaiyan Mootian who are directors and servants of the said THRIVE FOR GOOD FOUNDATION together with their advocates, Ms. Scola Nduku Munyao and Morris Mutual Kimuli and that the 1st Applicant has a serious grievance against the 2nd and 3rd Applicants and it is ironical that the 1st Applicant is purported to be joining the 2nd and 3rd Applicants to sue its own directors.

16. Mr Kraido deponed that he is aware that from the history of litigation between the 1st Applicant and the 2nd and 3rd Applicants, the 1st Applicant or its lawful Board of Directors did not instruct *Munyao-Kayugira & Co. Advocates* to file the application for contempt in order to enforce the Decree. He contends that the contempt of court proceedings should not be abused by the 2nd and 3rd Applicants as a veil for the fraud perpetrated by them as part of their scheme to irregularly deprive the 1st Applicant of its assets, objects and projects.

17. Mr Kraido states once he was instructed to come on record, he proceeded to file the consent dated 2nd September 2020 to protect the 1st Applicant's interests against the machinations of Ambrose Lemaiyan Mootian and the 2nd and 3rd Applicants. He therefore submits that there is no valid reason for the Notice of Appointment of Advocates and Consent dated 2nd September 2020 to be declared irregular or to be expunged from the record of the court.

18. Mr Kraido asserts that the application filed at the instance of the 2nd and 3rd Applicants is designed to exert undue pressure on the 1st and 2nd Respondents to release to them the 1st Applicant's assets yet they are strangers to it. He states that the Decree, as extracted is at variance with the award and therefore incapable of being executed without causing the 1st Applicant immense harm and injustice hence this court should not allow itself to be used as an avenue to perfect a claim founded on fraud and against public policy.

19. Mr Kraido submits that the only reason he was cited for contempt of court is because he filed a Notice of Appointment of Advocates to act for the 1st Applicant and subsequently filed consent with the 1st and 2nd Respondents to vary the Decree so as to protect the 1st Applicant's interests. Counsel stated that his firm received instructions from the 1st Applicant's Board of Directors which were appropriate

and which he had to accept irrespective of the nature of the case and the intentions of the 2nd and 3rd Applicants who clients of *Munyao-Kayugira & Co. Advocates*. He states that as a practicing advocate he had no reason to reject those instructions. He further pointed out that *Munyao-Kayugira Advocates* is not competent to represent the Applicants due to conflicting interest.

20. Counsel submits that 1st Applicant is not an aggrieved party so as to give rise to the alleged contempt. On the contrary, the 1st Applicant is happy with representation by the 3rd Respondent and that consent to vary the Decree is in its best interest as against the 2nd and 3rd Applicants. It is his contention that the application lacks merit, is frivolous and scandalous as it is filed by advocates who have no instructions to act for the 1st Applicant and the supporting affidavit is sworn by a stranger to the 1st Applicant.

Analysis and Determination

21. Having reviewed the application and depositions, I find that the main issue for determination is whether the Respondents are in contempt of the Decree. The terms of the Decree, whose contents I have set out above, are fairly straightforward and clear in their declarations and directions about what the 1st and 2nd Respondents are required to do or refrain from doing. I would point out at this stage that the Decree is valid and has not been set aside. Further, that although the 3rd Respondent contended that it was at variance with the award, he did not demonstrate the variance or defect in the Decree.

22. The Respondents do not deny having received the Decree or, at any rate, being unaware of the content. In any case, their knowledge of the Decree is fortified by the fact that the 1st and 2nd Respondent, purportedly acting on behalf of the 1st Applicant did appoint the 3rd Respondent to take steps to vary the Decree. What they seek in opposing the application is to justify their actions. The 3rd Respondent states that he was appointed to act for the 1st Applicant pursuant to a resolution made by the 1st Applicant. The 3rd Respondent has produced copies of the meeting held on 7th August 2020 which indicates that among those present were the 1st and 2nd Respondents appearing as Secretary and Member respectively of the 1st Applicant.

23. According to the Decree, the 1st and 2nd Respondents are not recognized as employees of the 1st Applicant and are restrained from interfering with its operations and projects. The meeting that took place on 7th August 2020, which was after the Decree was issued, demonstrates that the 1st and 2nd Respondents explicitly and expressly held themselves out as employees, members and or officials of the 1st Applicant running its affairs. Surely, it was not possible for them to purport to instruct the 3rd Respondent in the face of the Decree issued by this court which was clear that they did not have authority to act on the 1st Applicant's behalf. I find and hold that the 1st and 2nd Respondents knowingly disobeyed Decree by purporting to hold a meeting on behalf of the 1st Applicant when they were explicitly prohibited from doing so.

24. The 1st and 2nd Respondents appear to be seeking refuge in the decisions made in several cases; ***Kitale CM Cr. Case No. 5585 of 2018, Kitale CMC Cr. Case No.1028 of 2019, Kitale ELC Case No.3 of 2020*** and ***Kapenguria HCCC NO.2 OF 2020*** to justify their conduct and actions. None of those courts varied and or discharged the Decree and as such they cannot seek cover in those cases.

25. Moreover, ***Kapenguria HCCC NO. 2 OF 2020*** was resolved by Chemitei J., by a ruling dated 28th October 2020. The learned Judge discharged all the orders against the 1st Applicant which were procured by the 1st and 2nd Respondents purporting to act on its behalf. The learned Judge in his conclusion stated as follows:

[24] For the above reasons, the application dated 11th August 2020 is meritorious. The orders issued by this court dated 7th August 2020 as well as 9th August 2020 or any other orders made herein against the Plaintiff or in favour of the Plaintiff are hereby reviewed and set aside.

[25] The application for contempt dated 6th October 2020 is not merited for the reasons advanced above. The Applicant has not come to court with clean hands. They failed to disclose that they were no longer officials of the NGO, the Plaintiff, as found by the suits in Nairobi, mentioned above. In effect they should not purport to hold themselves as the Plaintiff's officials.

[26] The Plaintiff's chattels, namely motor Vehicles Reg. No. KCF 914P as well as all the moveable and immovable assets including all legal documents should be handed over to the defendant on behalf of the Plaintiff forthwith.

[27] The following, Boaz Oduor Ogollah and Douglas Kiniabei Makokha, their representatives and agents are hereby restrained from dealing with the Plaintiff in any way and any assets they may be holding should be released to the Plaintiff forthwith.

[28] The Officer in Charge Kitale Police Station, other than overseeing the implementation of this order should release the Motor Vehicle Registration No. KCF 914 P or any other assets in his custody to the Plaintiff.

[29] The Defendants shall have the costs of this application to be borne by the said Boaz Oduor Ogolla and Douglas Kiniabei Makokha jointly and severally.

26. It is clear from the excerpt of the ruling I have set out above, the Respondents cannot seek refuge in the ***Kapenguria case*** as that court effectively affirmed the Decree and issued orders in line with the Decree against the 1st and 2nd Respondents.

27. The Respondents position also rests on the contention that the Decree is no longer in force as a result of a consent letter dated 2nd September 2020 signed by *Kraido and Company Advocates*, the 3rd Respondent, for the 1st Applicant, the 2nd and 3rd Respondents. This consent provides as follows:

By consent of the 1st claimant, Organics 4 Orphans International and the respondents Boaz Oduor Ogollah and Douglas Kinaibei the Decree given on the 13th day of July 2020 be and is hereby varied as follows:-

1. The Arbitration proceedings and the resultant award published on 27/01/2020 and further award published on the 23rd March, 2020 and the award on costs published on 15th May, 2020 are a result of conscious, deliberate dishonesty and fraud played by the 2nd, 3rd and 4th claimants on the Tribunal and the Courts with a design to defraud the 1st claimant of its assets.
2. The Arbitration was pursued by the 2nd, 3rd and 4th claimants ex causa without the consent or valid instructions of the 1st claimant, contrary to Public Policy, and the resulting decree as it affects the respondents is incapable of being enforced against the respondents who are the 1st claimant's bona fide founders and lawful current directors entitled to run the affairs and business of the 1st claimant to the exclusion of the 2nd, 3rd and 4th claimants.
3. The 2nd and 3rd claimants being former donors to the 1st claimant were not founders of the 1st claimant and having being lawfully removed from the Board of Directors of the 1st claimant by direction of the Government of Kenya due to conflict of interest and contravention of the NGOs Coordination Act and Regulations, and the Kenya Citizenship and Immigration act and Regulations, are bound by the resolution of the 1st claimant's Board of Directors of 13th November 2018 to remove them from membership of the 1st claimant's Board in compliance with the Notice of the NGOs Coordination Board vide letter dated 13th July, 2018.
4. The 1st and 2nd respondents being current legitimate founder Directors of the 1st claimant do hold Motor Vehicle Registration No. KCF 914P, Toyota Cabin, L.R. NO. 2116/XVIII/947 (L.R. NO. 43777) and L.R. NO. 2116/1090 (L.R. NO. 57922), all movable assets, and records in trust for the 1st claimant organization pending hearing and determination of the following cases:-
 - a. Kapenguria HCCC No 2 of 2020 Organics 4 Orphans International Versus Thrive For Good Foundation, Dale Patrick Bolton, Linda Bolton, Steve Pippin, Dawson Mudeny, Ambrose Lemaiyan Mootian, Esther Siret, Scola Nduku Munyao t/a Munyao-Kayugira & Co. Advocates, Morris Mutua Kimuli t/a M. M. Kimuli & Co. Advocates, Officer Commanding Kitale Police Station
 - b. Kitale ELC Case No. 3 of 2020 Organics 4 Orphans International Versus Thrive For Good Foundation

Dale Patrick Bolton, Linda Bolton, Steve Pippin, Paul Weigel, Somy Winardi, James Woller, Kerri Roberts, Ambrose Lemaiyan Mootian, Raphael Munene, Rachel Nguri, Jacob Lotodo, Japheth Langat, Stephen Masatu, Ezekiel Abure Festo, Esther Siret, Joyce Juma
5. The respondents Boaz Oduor Ogolla (Member) and Douglas Kinaibei (Secretary) together with the other legitimate directors of the 1st claimant being Rose N. Kitayi (Chairman), Ruth Kageha (Treasurer), Irene Ratemo (Member), Judith Nasimiyu Namasaka (Member) and Emanuel Adigo Achaga (Member) do exercise control and protection of all of the 1st claimant's movable and immovable assets including the 1st claimant's Resource Centre on L. R. NO. 2116/XVIII/947 (L.R. NO. 43777) and Eden Guest House on L.R. NO. 2116/1090 (L.R. NO. 57922) and to exclusively carry on the 1st claimant's Objects, Projects and day to day operations.
6. That Ambrose Lemaiyan Mootian being the Chief Executive Officer of Thrive for Good Foundation being run by the 2nd, 3rd and 4th claimants in Canada, since the 13th day of November 2018 ceased to be the 1st claimant's, agent or employee, and is not authorized to write letters, conduct training, do fundraising or transact any business in Kenya or in any other country for and in the name of the 1st claimant.
7. That costs of Arbitration as between the 1st claimant and the respondents of Kshs. 2,069,725 be and are hereby marked as settled.
8. That a copy of the Varied Decree be served upon the NGOs Coordination Board to confirm that the 1st Claimant has fully complied with NGOs Coordination Board's Directives of 13th July 2018.

28. In as much as parties are entitled to enter into consent of any nature, this consent is of no effect for two reasons. First, it has not been endorsed by an order of this court which is necessary in order to effectively vary a decree of the same court. Second, the consent does not include the 2nd and 3rd Applicant who were parties to the arbitration proceedings and this application and ultimately beneficiaries of the Decree. Their accrued rights cannot be taken away in their absence and without their involvement. This is the fundamental rule of natural justice. For the avoidance of doubt, I declare the consent dated 2nd September 2020 null and void together with any acts that may have been done in compliance therewith and in consequence thereof.

29. It must now be beyond peradventure that that appointment of the 3rd Respondent by the 1st and 2nd Respondents to act for the 1st Applicant is null and void as the 1st and 2nd Respondents lacked capacity to act on behalf of the Applicant.

30. It is a settled principle that once a court issues an order, it binds all and sundry, the mighty and the lowly equally without exception. An order is meant to be obeyed and the court does not countenance a situation where parties and their representative use schemes, devices and tricks to undermine it. In **Attorney General v. Times Newspapers Ltd and Another [1991] 2 All ER 398**, it was held that it is immaterial whether one is a party to a suit or not and that anyone who knowingly impedes or interferes with the administration of justice is guilty of contempt irrespective of whether he is named in the order or not.

31. For one to be punished for contempt the following must be proved. First, that the person was aware of/had knowledge of the order. Second, the order must be clear and precise so as to leave no doubt on what a party was supposed to do/refrain from doing and third, there disobedience of order must be proved(see **Cecil Miller v. Jackson Njeru and Another [2017] eKLR**). In **Mutitika v Baharini Farm Limited [1985] KLR 229, 234**, the Court held that, “in our view the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt ... the standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi criminal in nature.”

32. In this case, the Respondents knew of the Decree which is clear and unequivocal on its terms. They deliberately took steps to undermine it by not only recording a consent order purporting to set it aside but also by filing others suits to re-assert the position of the 1st and 2nd Respondent as agents of the 1st Applicant.

33. I do not entertain any doubt that the 1st and 2nd Respondents are guilty of contempt but before I proceed any further I am alive to the following observations of the Supreme Court in **Republic v Ahmad Abolfathi Mohammed & Another [2018] eKLR**:

The power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the Respondents to establish that the alleged contemnor’s conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the Court Order.

34. The thrust of the 3rd Respondent’s case is that he was instructed by the 1st Applicant based it resolution by the bona fide Board of Directors comprising the 1st and 2nd Respondent. In such instances, the advocate has a duty to exercise due diligence and cannot escape sanction if it turns out he had no authority. In **East African Safari Air Ltd v Anthony Kegode & Another ML HCCC No. 345 of 2004 [2006] eKLR**, the court observed that:

When an Advocate is however instructed to file a suit, particularly against current or sitting directors or immediate former directors of the company, special care is required on the part of the Advocate or his firm that necessary authorisations by way of clear resolutions of the Board had been taken to institute the suit.

In this case, the 3rd Respondent cannot escape this court’s sanction. He depones that he was involved in the litigation between the parties. When he took over the conduct of this matter, he was shown the Decree hence he was aware that this court had affirmed that the 1st and 2nd Respondent had no authority to transact any business on the 1st Applicant’s behalf. That Decree has not been set aside and he only aggravated the contempt of the Decree by drafting and filing a defective consent in order to give a veneer of legality to the 1st and 2nd Respondent’s action and thus sanctify his appointment. He must therefore show cause why he should not be sanctioned by this court.

35. Before I exercise the court’s coercive and punitive powers, I now give the 1st and 2nd Respondents an opportunity to purge their contempt. They must now comply with the terms of the Decree. In doing so, I cannot ignore the orders of Chemitei J., whose effect is to enforce the Decree issued in this case. In the circumstances, I direct the 1st and 2nd Respondents to appear in court on a date to be fixed to confirm that they have complied with all the terms of the Decree.

36. If before that date, they have done so, they shall file and serve an affidavit confirming that they have complied with all the terms of the Decree. In the meantime, the 3rd Respondent shall also appear in court to show cause why it should not bear the cost or part thereof of this application.

DATED and DELIVERED at NAIROBI this 5th day of FEBRUARY 2021.

D. S. MAJANJA

JUDGE

Court of Assistant: MrM. Onyango

Ms Munyao instructed by Munyao-Kayugira and Company Advocates for the Applicants.

Mr Kinaro instructed by Kinaro and Company Advocates for the 1st and 2nd Respondents.

Mr Kraido for the 3rd Respondent.