



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CIVIL SUIT NO. 19 OF 2020

SHEILA CASSATT ISSENBERG.....1ST PLAINTIFF/APPLICANT

WATOTO WORLD CENTRE.....2ND PLAINTIFF/APPLICANT

-VERSUS-

ANTONY MACHATHA KINYANJUL.....DEFENDANT/RESPONDENT

RULING

1. The applicants took out a Notice of motion dated 18th September, 2020, brought under sections 3, 4(1) (a), 5, 28 and 34 of the Contempt of Court Act No. 46 of 2016, sections 1A and 3A of the Civil Procedure Act, Cap 21 and Order 51 Rule 1 of the Civil Procedure Rules, 2010.
2. The applicants sought an order, that summons be issued against the respondent to appear before court and show cause why he should not be committed to civil jail for such term as the court may deem just; that the respondent be cited for contempt of court and be committed to civil jail for a term of six(6) months until he purges his contempt and complies with the orders of this Honourable Court issued on 7th September, 2020 and or he be ordered to purge the contempt on terms this court deems fit; third, in lieu of the second prayer, the respondent be cited for Contempt of court and fined a sum of at least Kshs. 200,000 and that the court do make any such order for purposes of enforcing the temporary injunction issued by this Court. They also sought costs of the application.
3. The motion was based on the grounds on its face. According to the applicants, the Respondent disregarded an interim injunction issued by the court on 7th September, 2020 in the presence of his advocates and was subsequently served upon them on 9th September, 2020 and on 17th September, 2020. the 1st applicant is apprehensive that she will lose her entitlement and the respondent should be punished and directed to account for the proceeds of the sale of the farm produce and desist from threatening and denying the 2nd applicant's staff access to the premises until the suit is determined.
4. The motion is also supported by the affidavit of the 1st applicant sworn on 18th September, 2020, a further affidavit sworn on 10th December, 2020 and a supplementary affidavit sworn on 19th January, 2021. The 1st applicant reiterated the facts and the grounds on the face of the motion.
5. She deposed that she was the founder, principal donor and director of the 2nd applicant; that on 8th September, 2020, she requested one Everlyne Omenya and the rest of the 2nd respondent's staff to resume work at the Children's Centre and the farm and that Everlyne Omenya was to work in harmony with the respondent for her best interest; she was to give a daily report to her since she WAS based outside the country.
6. The 1st applicant stated that the respondent disobeyed the order issued on 7th September, 2020 by ; directing members of staff to plant corn and beans seedling without consulting her; changing locks of all access points to the 2nd applicant's farm thus denying access to some employees/staff; directing that some of the 2nd applicant's staff be denied access to the Centre's premises and excluding her from the daily management of the 2nd applicant's affairs by continuing to remove and selling farm produce without consulting her, and failing to account for the proceeds of the farm produce. The respondent also switched off the CCTV and electricity thereby jeopardizing security within the premises among other actions.
7. According to the applicants' further affidavit, the respondent requested for a meeting which was scheduled for 23rd October, 2020 for parties to negotiate an appropriate mode of returning the children the respondent had removed from the Centre for purposes of going back to school. However, the respondent did not attend but when eventually the Children officer Mr. Cosmas Karera arrived, the meeting was eventually held virtually.
8. The 1st applicant asserted that she undertook to resume funding on condition that the respondent step aside from his position as manager

for Everline Omenya in the interim; that the respondent comply with the order issued on 7th September, 2020 and stop harassing and threatening employees including Ms. Omenya among other conditions.

9. Although she kept her part of the bargain and resumed funding the respondent continued to violate the court order and the agreement made on 21st October, 2020. He even instructed Purity Mwet, the 2nd applicant's matron, not to take instructions from Ms. Omenya and denied her access to the store to assess the children's needs thus hampering Ms. Omenya from undertaking her duties. The respondent even withdrew lunch for staff members. He eventually denied Ms. Omenya access to the Centre on 18th November, 2020 and failed to account for the proceeds from the farm produce.

10. According to the 1st applicant, on 20th November, 2020 the respondent removed some children from the 2nd applicant and took them back to their homes thus exposing them to vulnerable conditions without paper work from the Department of Children Service or consulting her. She maintained that the respondent had failed to comply with the court order issued and was, therefore, in contempt.

11. The Respondent filed replying affidavits sworn on 25th September, 2020 and 3rd May, 2021. He deposed that he was the founder, sole director and manager of the 2nd applicant; that the 1st applicant had been a donor at Nangolie Nkera Children's Orphanage Centre before she was removed because of bypassing the board of that institution and undermining the local management and lacking a valid work permit.

12. According to the respondent, despite the 1st applicant being requested by the Department of the Children Services to furnish them with documents to enable her serve as a director, she failed to do so and opted to remain as a donor. It is the respondent's case that by virtue of the email of 8th September, 2013 she accepted to be a donor to the Department of Children Services which deprived her authority to engage in any director's roles in the 2nd applicant.

13. The respondent admitted that he and the 1st applicant entered into a partnership as a donor and he as the sole director of the 2nd applicant and there was nothing indicating that she was the found of the 2nd applicant. He denied that the 1st applicant ever mentioned **Watoto World Inc.** to him or to the Department of Children Services (DCS) during the partnership agreement. He stated that when this was discovered and inquiry made, she declined to shed light and continued to raise undisclosed amounts of donations in the name of the children at the 2nd applicant.

14. The respondent admitted that on 29th July, 2015, he and the 1st applicant incorporated the 2nd Applicant as the only members and directors and that despite reminding her about the work permit, she never bothered to get clearance from the DCS, thus she only remained director on paper and could only serve in her capacity as donor which she was still doing.

15. According to the respondent, the day to day activities at the 2nd applicant, are his prerogative, including appointing auditors with the full knowledge of the 1st applicant who agreed that he be signing financial records on her behalf which she claimed were fraudulent but she had not reported fraud. He stated that the documents regarding the operation of the 2nd applicant are at the 2nd applicant's premises which were accessible to the 1st applicant when she visited the country.

16. The respondent deposed that although he set up the 2nd respondent with the 1st applicant, it had grown because of his sole effort and he had never received any reports on misappropriation of funds from the 1st applicant or any complaint on his inability or failings as a director. He contended that he donated the parcel land **Kajiado/Olshoro-Onyore /1988** measuring approximately 0.64 Ha to the 2nd applicant which was acknowledged by the 1st applicant.

17. It is the respondent's case, therefore, that he had always cooperated with the 1st applicant and had been running activities of the 2nd Applicant since she resided outside the country and only visited as a tourist at most seven times a year. He further stated that he always responded to the 1st applicant's correspondences including emails; WhatsApp messages, telephone calls and text messages.

18. The respondent contended that if there were any shortcomings, the 1st applicant should have suspended funding and launched official complaints with the DCS which she did not. He stated that neither he nor DCS had ever been furnished with any documentation on Watoto World Inc. and when he insisted on transparency over the amount raised on its behalf, she did not.

19. The respondent maintained that as his duty to ensure the 2nd applicant complied with the law, he asked the 1st applicant to get work permits and clearance from DCS which included background check but she instead elected to come into the country using a tourist visa 7 times a year and avoided her obligations as a director, leaving him to run the 2nd applicant in the best way he could with her consultation.

20. He stated that he always conducted his roles as director under the Companies Act and as manager as per the 2nd applicant's Correct Mission Policy and being that the 1st Applicant had no work permit he was best placed to make decisions.

21. In response to the allegations that he disobeyed the court order, the respondent stated that he was requested to prevent water overflow in the 2nd applicant's holding tanks and upon getting professional advice, and consulting the 1st applicant, she went silent. He stated that the policy attached to her application was a forgery, the reports on expenditure were kept in the 2nd applicant's premises and were accessible, and that as a result of the sudden and blatant withdrawal of funding, the DCS transferred the children to another institution to safeguard their interests. He deposed that he was forced to send off the caregiving staff on unpaid leave and retained the farm workers and security, pending a meeting of the Board of Management of the Children's home run by the 2nd applicant which was delayed because of this case.

22. The respondent maintained that he had done everything in consultation with the 1st applicant and when requested to take one of the

children for serious hearing evaluation once during a period which the 2nd applicant was closed and the children were home with their guardians, she raised unnecessary issues despite the fact that she had never raised any of those issues with the DCS, if he was not acting in the best interests of the children.

23. According to the respondent, the 2nd applicant had competent employees who are aware of the responsibilities delegated to them by him to enable him perform his duties as director and he could not understand why the 1st applicant should direct him to perform duties already assigned to employees when she lacked capacity to hire or fire. He maintained that he had not denied the 1st applicant access to the cash and petty cash, supply invoices and draft financial statements. He further stated that the 2nd applicant had no bank account and relied on the joint account between him and the 1st applicant whose bank statements were accessible online by any of them.

24. In his affidavit, the respondent deposed that he was not in court when the consent order was recorded on 7th September, 2020 as he had travelled to Wajir County and upon being notified of the order by his then advocates on 16th September, 2020, he kept off the 2nd applicant and was never involved in any way in its management.

25. The Respondent contended that he never attended any government proceedings nor had correspondences on the affairs of the institution apart from 16th September, 2020 when he visited the premises with the intention of surrendering the keys but was restrained by security guards and was denied access. He maintained that the allegations against him by the 1st applicant were falsehoods aimed at painting him in bad light with the ulterior motive of securing his imprisonment.

26. He also stated that the accusations by several employees and more specifically Ms. Omenya on denying her access to the premises yet she had been operating from the premises, was not true. Further, when she came on board, he had already left the premises. He maintained that he was never in contact with the employees after his departure, thus the allegations that Purity Mwetini was to decline instructions from Ms. Omenya were false. He stated that he was a stranger to all allegations including selling farm produce, removing children from the institution, threatening staff with dismissal and objecting to enhanced security. It is his case that the CCTV system was internet enabled and could not run after the internal connection was disconnected on account of failure to pay in August, 2020.

27. He stated that he was a stranger to the allegations that he refused to grant Ms. Omenya access to the 2nd applicant's offices to retrieve documents to assist her in executing her duties as Manager; that Purity Mwetini (matron) refused to take instructions from her and would only take instructions from him.

28. It was the respondent's case that any recordings done by Purity Mwetini on 5th November, 2020 on the 2nd applicant's movement was not under his instructions and he never got to see any of those recordings. He denied taking any child from the premises and the allegations regarding 9th November, 2020 were farfetched. He further refuted allegations that he ordered Purity Mwetini to subject any child to corporal punishment. Such actions, he maintained, should have been reported to the relevant authorities.

29. He stated that it was in the public domain that the government issued a directive to all charitable children institutions to allow children who could be reunited with their families to do so as a measure of containing Covid-19 and therefore, he could not be accused of contributing to that. He refuted allegations that he had colluded with Purity Mwetini to sideline the 1st applicant leading to the 1st applicant to direct that she (Purity) be ejected from the 2nd applicant's premises for disobedience of her instructions on 26th November, 2020.

30. The respondent asserted that the applicants' claims were founded on innuendos and hearsay and were aimed at edging him out of management of the institution and that he would suffer prejudice if orders sought were granted.

31. The application was disposed of through written submissions.

32. The applicants filed written submissions dated 10th March, 2021 and filed on 23rd March, 2021. They submitted that the respondent intentionally and willfully disobeyed the court orders and was therefore in contempt. They relied on section 5 of the Judicature Act.

33. The applicants also relied on *Katsuri Ltd v Kapurchand Depar Shah* [2016] eKLR; *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another* [2005] 1 KLR 828 and *Miguna Miguna v Director of Public Prosecution & 2 others* [2018] eKLR.

34. To demonstrate that the respondent was in contempt, they submitted that his advocate was in court on 7th September, 2020 when the order was made and he was subsequently served with the orders on 9th September, 2020 and again on 21st September, 2020. They also argued that during a meeting with the applicants, the respondent was informed of the need to obey the orders for the smooth running of the 2nd applicant and, therefore, he maliciously and deliberately disobeyed the orders issued by the court. They relied on *Republic v Attorney General & Another Ex parte Mike Maina Kamau* [2020] eKLR; *Contempt in Modern New Zealand* and *Shimmers Plaza Limited v National Bank of Kenya* [2015] eKLR.

35. Submitting on the consequences of contempt, they relied on **Order 40 Rule 3(1) of the Civil Procedure Rules** and *Republic v Attorney General & another Ex parte Mike Maina Kamau* (supra) that the court should punish contemnors. They also relied on *Econet Wireless Ltd vs Minister for Information & Communication of Kenya & Another* (supra) and the *Shimmers Plaza case* for the proposition that court orders are not issued in vain and must be obeyed.

36. The applicants submitted that their application was merited considering the respondent's conduct. They urged that the application be allowed with costs. They relied on **Judicial Hints on Civil Procedure, 2nd Edition (Nairobi) Law Africa 2011, Page 94; Cecilia Karuru Ngayu v Barclays Bank of Kenya & Another** [2016] eKLR.

37. The respondent filed written submissions dated 29th April, 2021. He submitted that he did not disobey the court orders issued on 7th September 2020, and was not, therefore, in contempt of court.

38. The respondent argued, relying on ***R v Attorney General & Another Ex parte Mike Maina Kamau*** (supra), that an applicant for contempt of court should prove that the terms of the order were clear and unambiguous and binding on the defendant; that the defendant had knowledge or proper notice of the orders; that he acted in breach of the terms of the order and that his conduct was deliberate.

39. The respondent further argued that the standard of proof in contempt proceedings was higher than proof on the balance of probabilities, and relied on ***Mutiika v Baharini Farm Limited*** [1985] KLR 229. According to the respondent, the allegations and statements by the 1st applicant lacked probative value and were not admissible when his liberty was at stake since they were from third parties and were not witnessed by her. He argued that none of the employees who allegedly heard him making threats or behaving in a contemptuous manner swore affidavits to support of the applicant's assertions. He relied on ***Life Insurance Corporation of India v Panesar*** [1967] EA 614.

40. The respondent argued that the applicants had not met the standard of proof since the allegations were based on unsubstantiated affidavit evidence of the 1st applicant. He further argued that he had gone out of his way to dedicate his time and resources for the promotion and protection of the rights of children and it was unfortunate that he was being cited for contempt on account of unsubstantiated allegations. He relied on the ***Mutiika case (supra)***.

41. He submitted that he had demonstrated that he was a passionate citizen in the protection and promotion of children's rights and that he abided by the court orders and stayed away from the premises when he learnt about the court order. He prayed that the application be dismissed with costs.

42. I have considered the application, response thereto, submissions by counsel for the parties and the decisions cited. Parties have addressed numerous issues in this application that are not necessary at this stage. This is so because what is before court is an application to cite the respondent for contempt of court. The applicants' case is that the respondent violated this court's order issued on 7th September 2020 directing the respondent not to do certain things in the name or on behalf of the 2nd applicant. The applicants have stated that the respondent was served with the order but failed to comply. They have, therefore, sought to cite him for contempt of court for disobedience of that order.

43. The respondent has denied violating the court order as alleged. He also stated that he was not served with the court order as he was away in Wajir and when he came to know of existence of the order he stayed away from the 2nd applicant's affairs.

44. Contempt of court is that conduct or action that defies or disrespects authority of court. ***Black's Law Dictionary 9th Edition***, defines contempt as:

The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.

45. Properly put, contempt is conduct that impairs the fair and efficient administration of justice. **Section 5** of the Judicature Act confers jurisdiction on the superior courts to punish for contempt. The applicants also cited provisions of the Contempt of Court Act No. 46 of 2016. That Act was however declared constitutionally invalid and nullified in 2018, (See ***Kenya Human Rights Commission v Attorney General & 2 Others*** [2018] eKLR).

46. Order 40 rule (3) of the Civil Procedure Rules (2010) provides that in cases of disobedience, or of breach of any terms of a temporary injunction, the court granting that 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 six months unless in the meantime the court directs his release. This application has therefore invoked this court's powers in terms of Order 40 rule (3).

47. The reason why courts punish for contempt is to uphold the dignity and authority of the court, ensure compliance with directions of the court, observance and respect of due process of law, preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice by courts. Without sanctions for contempt, there would be a serious threat to the rule of law and administration of justice. For a party to be cited for contempt, he must have violated and or disobeyed an order that was directed at him.

48. The application before court seeks to have the respondent cited contempt of this court's order of 7th September 2020 and to be committed him to civil jail and or fined as the court may deem fit. The applicants further pray that the respondent be directed to purge his contempt by complying with that court order.

49. Dealing with the question of contempt in ***Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another*** [2005] KLR 828, **Ibrahim, J.** (as he then was), underscored the importance of obeying court orders, stating:

It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void. (emphasis)

50. In ***T. N. Gadaverman Thiru Mulpad v Ashok Khot And Anor*** [2006] 5 SCC, the Supreme Court of India also emphasized on the dangers of disobeying Court orders, thus:

Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with.

51. Contempt of Court is in the nature of criminal proceedings and, therefore, proof of a case against a contemnor is higher than that of balance of probability. This is because liberty of the subject is usually at stake and the applicant must prove willful and deliberate disobedience of the court order, if he were to succeed. This was aptly stated in *Gatharia K. Mutikika v Baharini Farm Limited* [1985] KLR 227, that:

A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a 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 criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature.

However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the party of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.

52. Due to the gravity of consequences that ordinarily flow from contempt proceedings, it is proper that the order be served and the person cited for contempt should have had personal knowledge of that order.

53. The 1st applicant deposed that the respondent's advocate was in court when the order was made and the respondent was subsequently served with the order. I have perused the application dated 18th September 2020 and the affidavit in support. There is no affidavit of service attached to that application. I have also perused the further affidavit sworn by the 1st applicant on 10th December 2020, but could not again trace an affidavit of service. There is yet a supplementary affidavit by the 1st applicant of 19th January 2021. It does not also contain an affidavit of service of the order on the respondent. The applicants did not point out to any affidavit of service they may have filed to demonstrate that the respondent was served with the court order. It is therefore clear that the respondent was never served with the court order; he was aware of its terms and that he willfully and deliberately disobeyed it. There is no evidence placed before this court that the respondent was served or was aware of the order which he disobeyed. For the respondent to be held in contempt, the applicants must demonstrate that there was willful disobedience of the order.

54. In this regard, the Supreme Court of India held in *Indian Airports Employees Union v Ranjan Catterjee & Another* [AIR 1999 SC 880: 1999(2) SCC:537], that ***in order to amount to "civil contempt" disobedience must be willful. If disobedience is based on the interpretation of court's order, notification and other relevant documents, it does not amount to willful disobedience.***

55. The applicants submitted that respondent was aware of the order because his advocate was in court. There is no evidence that the respondent was aware of the terms of the order. Knowledge is a question of fact and one must be aware of the terms of the order. That is, he must know what the order required him to do or not to do but willfully and deliberately disobeyed it.

56. More importantly, the affidavits in support of the application for contempt, are by the 1st applicant and were notarized in Massachusetts, in USA. She swore on matters that were not within her own knowledge. Those who informed her that the respondent violated the court order did not themselves swear affidavits to confirm that indeed the respondent committed the acts he is accused of committing in violation of the court order.

57. As was again stated by the Supreme Court of India in *Mahinderjit Singh Bitta v Union of India & Others* 1 A NO. 10 of 2010 (13th October, 2011):

In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and willful violation of the order of the court, even to constitute a civil contempt. Every party is lis before the court and even otherwise, is expected to obey the orders of the court in its spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution. (Emphasis).

58. The emphasis as shown in the above cases is that there must be "***willful and deliberate disobedience of court orders.***" There cannot be deliberate and willful disobedience, unless the contemnor had knowledge of the existence of that order. And because contempt is of a criminal nature, it is always important that breach of the order be proved to the required standard; first, that the contemnor was aware of the order having been served or having personal knowledge of it, and second; that he deliberately and willfully disobeyed it.

59. In *Peter K Yego & others v Pauline Wekesa Kode*, (Acc No. 194 of 2014, the court stated that "***it must be proved that one had actually disobeyed the court order before being cited to contempt.***"

60. And in *Katsuri Limited v Kapurchand Depor Shah* [2016] eKLR, citing *Kristen Carla Burchell v Barry Grant Burchell* (Eastern Cape

Division case No 364 of 2005), it was stated that “*in order for an applicant to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, knowledge of the terms by the respondent, failure by the respondent to comply with the terms of the order.*”

61. The **Cromwell J**, writing for the Supreme of Canada in **Carey v Laiken**, 2015 SCC 17 (16th April 2015), expounded on the three elements of **civil contempt** of court which must be established to the satisfaction of the court, thus:

*i) The order alleged to have been breached “**must state clearly and unequivocally what should and should not be done.**” This ensures that a party will not be found in contempt where an order is unclear. An order may be found to be unclear if, for example, it is missing an essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning.*

ii) The party alleged to have breached the order must have had actual knowledge of it. It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the willful blindness doctrine.

iii) The party alleged to be in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels. (emphasis)

62. In the present application, it has not been sufficiently demonstrated that the respondent deliberately disobeyed court orders or at all. Contempt proceedings are a serious undertaking because a court exercising this jurisdiction is minded to ensure the orderly functioning of society and the rule of law. On conviction, the alleged contemnor stands to lose his or her liberty. It should not, therefore, be taken lightly.

63. It was in this regard that the Indian Supreme Court again stated in **Re: Vinay Chandra Mishra [(1995) 2 SCC584]**, that:

The judiciary has a special and additional duty to perform, viz, to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. Dignity and authority of the court has to be respected and protected at all costs.

64. But even as courts punish for contempt to safeguard the peaceful and development of society and the rule of law, it must be borne in mind that the power to punish for contempt is a discretionary one and should be used sparingly. That is why the court observed in **Carey v Laiken** (supra), that if courts were to find contempt too easily, “*a court’s outrage might be treated as just so much bluster that might ultimately cheapen the role and authority of the very judicial power it seeks to protect The court’s contempt power should be used cautiously and with great restraint. It is an enforcement power of last resort rather than first resort.*”

65. Taking into account the circumstances of this case and the material placed before court, I am not satisfied that the applicants have proved their case to the required standard. Consequently, the application dated 18th September 2020 is declined and dismissed. Each party will, however bear their own costs.

DATED, SIGNED AND DELIVERED AT KAJIADO THIS 2ND DAY OF JULY 2021.

E C MWITA

JUDGE