



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**COMMERCIAL & TAX DIVISION**

**HCCC NO. 35 OF 2006**

**RADHABAI SHIVJI BHANDERI suing as the administrator**

**of the estate of Shivji Bhanderi.....PLAINTIFF**

**VERSUS**

**ROSE HOLDINGS LTD.....1<sup>ST</sup> DEFENDANT**

**JOYITIBAL DESAI.....2<sup>ND</sup> DEFENDANT**

**SUMANT DESAI.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. When on 9<sup>th</sup> November 2018, Hon. Justice E. C. Mwita declared the entire Contempt of Court Act (No. 46 of 2016) as unconstitutional (**Kenya Human Rights Commission –vs- Attorney General & Another** 2018 eKLR), the law of contempt of Court in Kenya reverted back to its past position.

2. A natural consequence of that decision is that Section 5 of the Judicature Act which had been repealed by Act No. 46 of 2016 was reinstated. Section 5 reads:-

“The High Court and the Court of Appeal shall have the same power to punish for contempt of Court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of Subordinate Courts”.

3. The ex parte Notice of Motion dated 23<sup>rd</sup> August 2019 seeks a single substantive prayer. A prayer that the Applicant be granted leave to cite the respondents for contempt of Court for disobeying orders made by this Court on 28<sup>th</sup> June 2019.

4. I agree with counsel for the Respondent that the application is superfluous and is not grantable because permission of the Court is not necessary for the bringing of contempt proceedings for disobeying an order of Court.

5. The power to punish for contempt of Court for the time being possessed by the High Court of Justice in England reposes in Part 81 of the Civil Procedure (Amendment No. 2) Rules, 2012. Rule 81.10 of the Rules provides for the procedure in making an application for committal for breach of a Judgment, Order or undertaking to do or abstain from doing an act. Section 81.10 reads:-

“(1) A committal application is made by an application notice under Part 23 in the proceedings in which the judgment or order was made or the undertaking was given.

(2) Where the committal application is made against a person who is not an existing party to the proceedings, it is made against that person by an application notice under Part 23.

(3) The application notice must—

(a) set out in full the grounds on which the committal application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts; and

(b) be supported by one or more affidavits containing all the evidence relied upon.

(4) Subject to paragraph (5), the application notice and the evidence in support must be served personally on the respondent.

(5) The court may—

(a) dispense with service under paragraph (4) if it considers it just to do so; or

(b) make an order in respect of service by an alternative method or at an alternative place.”

6. Unlike committal for interference with the due administration of Justice (Rules 81.12 and 81.13), permission of the Court is not required for the bringing of a committal application for breach of a judgment or order of Court.

7. The Application of 23<sup>rd</sup> August 2019 is not necessary and not grantable. I dismiss it with costs. Let the Applicant bring a substantive application for committal.

**Dated, Signed and Delivered in Court at Eldoret this 13<sup>th</sup> Day of May 2020**

**F. TUIYOTT**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 17<sup>th</sup> April 2020, this Ruling has been delivered to the parties through virtual platform.

**F. TUIYOTT**

**JUDGE**

**PRESENT:**

No appearance for Applicant.

Nyakundi

for

Respondent.