



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BOMET**

**MISC. APPLICATION NUMBER 25 OF 2017**

**BOMET COUNTY ASSEMBLY SERVICE BOARD.....APPLICANT**

**VERSUS**

**THE GOVERNOR BOMET COUNTY.....1<sup>ST</sup> RESPONDENT**

**THE COUNTY EXECUTIVE COMMITTEE**

**MEMBER-FINANCE.....2<sup>ND</sup> RESPONDENT**

**THE COUNTY EXECUTIVE COMMITTEE**

**MEMBER-URBAN PLANNING.....3<sup>RD</sup> RESPONDENT**

**THE CONTROLLER OF BUDGET.....4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The Applicant filed an Application by way of Notice of Motion dated 21<sup>st</sup> June, 2017 brought under Order 5 of the Contempt of Court Act 2016, the inherent jurisdiction of the Court and all other enabling provisions of law together with Supporting Affidavit of Hon. Geoffrey Kipngetch Korir and which was brought under Certificate of Urgency seeking orders;

1. THAT due to the urgency hereof, service of this application be dispensed with, the same be certified as urgent and it be heard ex-parte in the 1<sup>st</sup> instance.

2. THAT upon hearing this application inter-parties, this Honorable Court be and is hereby pleased to punish the 2<sup>nd</sup> Respondent one David Cheruiyot for contempt of court by committing him to civil jail for a period of six months as well as by imposing a fine of Kshs. 200,000/= for willfully disobeying a lawful court order entered by consent dated 30<sup>th</sup> March, 2017.

2. The Application was founded on the following grounds and those set out in the Supporting Affidavit of Hon. Geoffrey Kipngetch Korir;

a) THAT a consent order was recorded on 30<sup>th</sup> March, 2017 before this Honorable Court.

b) THAT the 2<sup>nd</sup> Respondent was directed to submit all related requisitions and work plans on development by the County Assembly to the Controller of Budget within 14days from 30<sup>th</sup> March, 2017.

c) THAT the 2<sup>nd</sup> Respondent has adamantly refused and/or neglected to comply with the subject consent order.

d) THAT the subject court order was served upon the 2<sup>nd</sup> Respondent.

e) THAT it is imperative that the orders sought herein be granted to uphold the dignity and authority of this Honorable Court.

f) THAT it is only fair, just and in the interest of justice that the orders sought be granted.

g) THAT the 2<sup>nd</sup> Respondent do and hereby show cause why he should not be committed to civil jail.

h) THAT an order of committal be made against David Cheruiyot the 2<sup>nd</sup> Respondent to prison for six months or such period as the court may deem fit in that the 2<sup>nd</sup> Respondent has disobeyed a court order.

i) THAT in the alternative the 2<sup>nd</sup> Respondent be condemned to pay Kenya Shillings Two Hundred Thousand as fine for disobeying this Honorable Court's Order issued on 30<sup>th</sup> March, 2017.

#### **APPLICANT'S CASE**

3. By the Supporting Affidavit sworn by Hon. Geoffrey Kipngetich Korir, it is averred that on 30<sup>th</sup> January, 2017 the Petitioner herein filled a petition against the Respondents herein being Petition No. 2 of 2017.

4. It is further stated that the Petition together with the Notice of Motion filed simultaneously were withdrawn vide a consent order filed on 30<sup>th</sup> March, 2017.

5. Hon. Geoffrey indicated that the consent order was extracted and served upon the 2<sup>nd</sup> Respondent who was required to submit all related requisitions and work plans on development by the County Assembly to the Controller of Budget within 14days from 30<sup>th</sup> March, 2017 which the 2<sup>nd</sup> Respondent has willfully refused to comply with.

6. It is averred that whereas the 2<sup>nd</sup> Respondent has been requisitioning for the recurrent funds on behalf of the County Assembly, the 2<sup>nd</sup> Respondent had deliberately withheld and/or failed to transmit the requisitions and development work plans for and on behalf of the County Assembly to the 4<sup>th</sup> Respondent for authorization for payment despite his receipt and acknowledgment of the same.

7. It is also stated that despite the County Assembly forwarding its work plans on development as early as 28<sup>th</sup> September, 2016 and persistently following up on the same from the said time of date, the 2<sup>nd</sup> Respondent has failed without any justification given to forward the work plan to the 4<sup>th</sup> Respondent.

8. The Applicant avers that it has entered into a contract for construction work within the Bomet County Assembly premises with contractors and that the prevailing state of affairs is highly prejudicial to the Applicant as it cannot pay the contractors on site which position may trigger the contractors to file suit against them for breach of contract.

9. It is therefore the Applicant's prayer that it is imperative that the court grants the orders as sought to uphold the dignity of this Honorable Court.

#### **1<sup>ST</sup>, 2<sup>ND</sup> AND 3<sup>RD</sup> RESPONDENTS CASE**

10. In response to the above application the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed an application Notice of Motion dated 28<sup>th</sup> June, 2017 under Rule 21(1) , (2), 24, 25, 20 of the Constitution of Kenya ( PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013, Article 50 of the Constitution 2010 and all other enabling statutes together with Supporting Affidavit of Erick Korir and which was brought under Certificate of Urgency seeking the Honorable Court to set aside the proceedings for 27<sup>th</sup> June, 2017 and all consequential orders thereto and enable them to file their response and also sought that the Grounds of Opposition, Replying Affidavit and Preliminary Objection attached be deemed as dully filed.

11. The Notice of Preliminary Objection was founded on grounds:

1. THAT the Application at hand is against the Provisions of Section 30 (2) of the Contempt of Court Act.
2. THAT pursuant to Section 5, 6 and 7 of the Contempt of Court Act, this Court does not have jurisdiction to hear and determine the matter.
3. THAT this suit has been brought to this court in clear disregard the due process of court.

12. Further the Respondents in opposing the application filed the following grounds of opposition;

1. THAT the application herein is misconceived, incompetent, fatally defective, premature, hollow, bad in law, incurable, frivolous, non-starters and a clear abuse of the court process intended to intimidate and or scare officers of the County Government of Bomet.
2. THAT it is the Respondents view that the aid Notice of Motion Application is incompetent, in bad faith and unsustainable in law as the prayers sought therein are against provisions of section 30(2) of the Contempt of Court Act.
3. THAT there is no sufficient evidence brought before this Honorable Court in support of the Application and the prayers sought.
4. THAT the Application is contrary to the provisions of the Contempt of Court Act and Constitution of Kenya 2010.

13. In the replying affidavit sworn by Erick Korir Senior Director Legal Department of Bomet County Government it is deponed that Hon. David Cheruiyot's appointment as the County Executive Member for Finance Bomet County was rejected by the County Assembly thus the

application at hand is incompetent.

14. It is averred that the former County Executive Member for Finance Dr. Peter K. Koros resigned his position to seek an elective post in the coming August general elections.

15. Mr. Korir indicate that there is clear distinction between Bomet High Court Petition Number 2 of 2017 and the suit at hand therefore this Honorable Court does not have jurisdiction to hear and determine this matter as the application ought to have been filed in Petition where the orders in issue were made.

16. Finally, it is the Respondents case that the Applicant has approached Court with dirty hands and prays that the Application be dismissed with costs.

17. The Applicant in response filed grounds of opposition to preliminary objection dated 25<sup>th</sup> July, 2017 indicating that the preliminary objection filed is misconceived as the notice contemplated in section 30 of the Contempt of Court Act is to be issued by the court and not the Applicant in a contempt proceeding.

18. Therefore, the preliminary objection is an abuse of the court process only meant to delay the contempt proceedings at hand and ought to be dismissed as the same as drawn is fatally defective, ill-advised and has no basis.

19. The Preliminary Objection was canvassed by way of written submissions.

### **APPLICANT'S SUBMISSION**

20. The Applicant contends that that the Preliminary Objection is premature as it is for the court, upon perusing an application of contempt, and not a party to give the notice contemplated in section 30 of the Contempt of Court Act and states that the right time to raise the instant preliminary objection is when a notice to show cause has been issued without taking to account the section 30 of the Contempt of Court Act.

21. The Applicant in relying in the case of **Mukisa Biscuits Manufacturing Co. Ltd Vs. West End Distributors Ltd (1969) EA 696** where the court held that: "***A preliminary objection consists of a point of law which has been pleaded, which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation or submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.***" submits that the preliminary objection herein does not meet the threshold as set in the stated case as it should be on pure points of law and not when facts such as whether a notice has been given or not as contested by the Applicants in this case.

22. In Mukisa Case the court went further to state as follows: - "***a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.***"

23. It is the Mr. Kabue counsel for the Applicant contention that the current preliminary objection is akin to the Respondents seeking the expertise of judicial discretion. He further goes to stress that the preliminary objection, even if it succeeds will not determine the matter as what the Respondents are simply seeking to compel the court to issue the notice contemplated in section 30 of the Contempt of Court Act when the court is yet to get to that stage.

24. In conclusion it is the Applicants submission that the Honorable Court should dismiss the instant preliminary objection as it is misconceived, misplaced, defective, premature and incompetent at this stage of the proceedings and that this Honorable Court has no power to entertain it before a notice had been formally issued by the court.

### **1<sup>ST</sup>, 2<sup>ND</sup> AND 3<sup>RD</sup> RESPONDENTS SUBMISSION.**

25. The counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents Mr.Mugumya indicated that he wish to rely on the list of authorities dated 24<sup>th</sup> July, 2017 and filed on the same date which he listed the **Nairobi , High Court, JR Misc. Application Number 165 of 2013, Republic Vs. The Principal Secretary, Ministry of Lands, Housing and Urban Development; Nairobi, High Court, Misc. Civil Application Number 221 of 2016, Republic Vs. The Chief Officer, Finance & Economic Planning Nairobi County**, Contempt of Court Act, 2016 and any other relevant authorities and laws with the leave of court.

26. Section 5 provides for jurisdiction of superior courts and states as follows:-

- a) *Every superior court shall have power to:-*
- b) *Punish for contempt of court on the face of the court;*
- c) *Punish contempt of court; and*
- d) *Uphold the dignity and authority of subordinate courts.*

27. Section 30 provides for punishment against management of State Organ, government department, ministry or corporation and states as follows:-

1) Where a State organ, government department, ministry or corporation is guilty of contempt of court in respect of any undertaking given to a court by the state organ, government department, ministry or corporation, the court shall serve a notice of not less than thirty days on the accounting officer, requiring the accounting officer to show cause why contempt of court proceedings should not be commenced against the accounting officer.

2) No contempt of court proceedings shall be commenced against the accounting officer of a State Organ, government, ministry or corporation, unless the court has issued a notice of not less than thirty days to the accounting officer to show cause why contempt of court proceedings should not be commenced against the accounting officer.

3) A notice issued under subsection (1) shall be served on the accounting officer and the Attorney- General.

4) If the accounting officer does not respond to the notice to show cause issued under subsection (1) within thirty days of the receipt of the notice, the court shall proceed and commence contempt of court proceedings against the accounting officer.

5) Where the contempt of court is committed by a state organ, government department, ministry or corporation, and it is proved to the satisfaction of the court that the contempt has been committed with the consent or connivance of, or is attributed to any neglect on the part of any accounting officer, such accounting officer shall be deemed to be guilty of the contempt and may with the leave of the court be liable to a fine not exceeding two hundred thousand shillings.

6) No state officer or public officer shall be convicted of contempt of court for the execution of his duties in good faith.

28. I have considered the application, the replying affidavit filed in response to the application, Notice of Preliminary Objection, Grounds of Opposition, Grounds of Opposition to Preliminary Objection and written submissions by the Applicant together with authorities cited and applicable law stated by all parties and it is clear that the relief sought arises from allegation of contempt of court orders therefore what is for determination in this matter is with respect to contempt of court.

29. It should be noted that Parliament vide Act No. 46 of 2016 enacted the Contempt of Court Act, 2016 which was assented to on 23<sup>rd</sup> December, 2016 and commenced on 13<sup>th</sup> January, 2017. Therefore, the applicable law that governs contempt proceedings is the said Act.

30. Before the enactment of the Contempt of Court Act, 2016, the procedure therein was guided by section 5 of the Judicature Act which imported the procedure from Contempt of Court followed by the High Court of Justice in England. **Judge G V Odunga** in **June Seventeenth Enterprises Limited case** provide that; *“Whereas Section 5 of the Judicature Act was deleted by Section 38 of the Act, the rules contemplated by section 37 have not yet been promulgated. In my view, in the absence of the rules of procedure the lacuna must be filled by the invocation of section 24 of the Interpretation and General Provisions Act which provides that:*

*‘where an Act or part of an Act is repealed, subsidiary legislation issued under or made in virtue thereof shall, unless a contrary intention appears, remain in force, so far as it is not inconsistent with the repealing Act, until it has been revoked or repealed by subsidiary legislation issued or made under the provisions of the repealing Act, and shall be deemed for all purposes to have been made thereunder.’*

31. Contempt in the Act’s context includes Civil Contempt which means, *“willful disobedience of any judgment, decree, direction, order or other process of a court or willful breach of an undertaking given to court.”* It is therefore clear that the willful disobedience of a judgment, decree or order properly constitutes contempt of court.

32. Section 30 of the Contempt of Court Act stipulates way in which the proceedings ought to be brought before the court. According to Judge G V Odunga in the case of **June Seventeenth Enterprises Limited Vs. Cabinet Secretary of Ministry of interior and Coordination of National Government & 2 Others (2017) eKLR** states as follows;

*“According to the forgoing provisions, before any Civil Contempt of Court proceedings are instituted in disobedience of a judgment, decree or order, the applicant must first move the Court to issue a notice to show cause against the accounting officer of the State Organ, government department, ministry or corporation concerned. Such notice is to be served on both the accounting officer and the Attorney General. If no such response to the notice is received, the Court may then at the expiry of the said thirty days’ notice proceed to commence contempt of court proceedings against the concerned accounting officer. In my view the thirty days’ period is meant to enable the Attorney General to give legal advice to the entity concerned and thus avoid the necessity of contempt proceedings. Where however the entity believes that contempt of court proceedings ought not to be commenced, the entity is required to within the said period show cause, in my view preferably by way of an affidavit why the said proceedings ought not to be commenced. The court will then determine whether cause has been shown or not based on the material before it. Without the rules of procedure having been promulgated it is therefore my view that an application for notice ought to be accompanied by an affidavit and that application may be heard ex parte since the merits thereon may be dealt with when the cause is shown by the entity or public officer concerned.”*

This is also the position that was taken in the case of **Republic Vs. County Chief Officer, Finance & Economic Planning, Nairobi City County Ex parte Stanley Muturi (2017)eKLR** which case the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have chosen to rely upon.

33. In the case of **Republic Vs. Returning Officer of Kamkunji Constituency & Electoral Commission of Kenya HCMCA No. 13 of 2008** it was held that; *“Parliament intended and that the High Court has the responsibility for the maintenance of the rule of law hence*

*there cannot be a gap in the application of the rule of law. Therefore, where there is a lacuna with respect to enforcement of remedies provided under the Constitution or an Act of Parliament, or if, through the procedure provided under an Act of Parliament, an aggrieved party is left with no alternative but to invoke the jurisdiction of the Court and the Court perfectly within its rights to adopt such a procedure as would effectually give meaningful relief to the party aggrieved. To fail to do so would be to engender and abet an injustice and as has been held before, a court of justice has no jurisdiction to do injustice.”*

34. In **Board of Governors Moi High School Kabarak Vs. Malcolm Bell & Another, (Supreme Court Petition No. 6 & 7 of 2013)**, the supreme court of Kenya described the power to punish for contempt as *“a power of the court to safeguard itself against contemptuous or disruptive intrusion from elsewhere and identified that power as one of the indisputable attributes of the court’s inherent power. Without that power, protection of citizens’ rights and freedom would be virtually impossible. Court of law would be reduced to futile institutions spewing forth orders in vain.”*

35. See also **Sam Nyamweya & 3 Others Vs. Kenya Premier League Limited & 2 Others (2015)e KLR** Where Aburili J. held that *“A court order requiring compliance is not a mere suggestion or an opinion or a point of view. It is a command that is issued after such thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy. If one is dissatisfied with an order of the court, the avenue for challenging it are also set out in the law. Defiance should never be an option.”*

36. Following the above quoted case laws, it is clear that all parties to the current matter have raised issues which bear great weights and the same cannot be disregarded.

37. I will have to concur with the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and guided by the cases of **June Seventeenth Enterprises Limited Vs. Cabinet Secretary of Ministry of interior and Coordination of National Government & 2 Others (2017) eKLR** and **Republic Vs. County Chief Officer, Finance & Economic Planning, Nairobi City County Ex parte Stanley Muturi (2017)eKLR** and Section 30 of Contempt of Court Act, 2016 that the law requires that the Applicant ought to first move the Court to issue a notice to show cause against the 2<sup>nd</sup> Respondent before moving the court for contempt proceedings for disobedience of the court order made on 30<sup>th</sup> March, 2017.

38. The Applicant opposed to the Preliminary Objection raised by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. I will agree that the threshold for Preliminary Objection was set down in Mukisa Biscuit Case as indicated by the Applicant in their submission and further I concur with their sentiment that a Preliminary Objection when dealt with should be able to dispose of the suit in the 1<sup>st</sup> instance.

39. It is my finding that the Preliminary Objection raised by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents dated 28<sup>th</sup> June, 2017 does not meet the threshold as set down in Mukisa Case as what is stated even if correct cannot in any way dispose of the application as it stands.

40. However despite the facts that the Preliminary Object does not stand it should also be acknowledged that the prayers sought in the application Notice of Motion dated 21<sup>st</sup> June, 2017 in so far as they relate to contempt cannot be issued due to non- compliance.

41. It is also in my finding that it is clear that the directions which were given by this court in the order dated 30<sup>th</sup> March, 2017 in particular with respect to paragraph 4 which indicate that the 2<sup>nd</sup> Respondent to submit all related requisitions and work plans on development by the County Assembly to the 4<sup>th</sup> Respondent within 14days from the date in which the order was made were not complied with. In my view the cause of conflict between the parties herein is the failure to submit the requisition and work plans by the 2<sup>nd</sup> Respondent as the issues which are the subject of this application would have been sorted out following the submission of the same.

42. It is my finding that the deposition by Mr. Erick Korir in his replying affidavit paragraph 3 that the 2<sup>nd</sup> Respondent’s appointment as the County Executive Member for Finance Bomet was rejected by the County Assembly Bomet and therefore the application at hand is incompetent does not hold water as the orders disobeyed were issued in March 2017 way before the letter proposing recommendation dated 10<sup>th</sup> May, 2017 was issued and therefore the court cannot interfere with the County’s internal affairs as to appointments of officials.

43. It is my finding that the court order issued on 30<sup>th</sup> March, 2017 was deliberately and willfully being disobeyed and ignored a matter which should not be entertained and taken lightly by this Honorable Court as defiance should never be an option and that court orders should be followed to the letter.

44. In the case of **Republic v Principal Secretary, Ministry of Defence Ex parte George Kariuki Waithaka [2019] eKLR**, the court stated as follows on the issue of disobedience of court orders;

*“..... the applicable law on the procedure in contempt of Court proceedings against a government officer such as the Respondent was provided in section 30 of the Contempt of Court Act of 2015.... which states as follows:*

*“(1) Where a State organ, government department, ministry or corporation is guilty of contempt of court in respect of any undertaking given to a court by the State organ, government department, ministry or corporation, the court shall serve a notice of not less than thirty days on the accounting officer, requiring the accounting officer to show cause why contempt of court proceedings should not be commenced against the accounting officer.*

*(2) No contempt of court proceedings shall be commenced against the accounting officer of a State organ, government department, ministry or corporation, unless the court has issued a notice of not less than thirty days to the accounting*

*officer to show cause why contempt of court proceedings should not be commenced against the accounting officer.*

*(3) A notice issued under subsection (1) shall be served on the accounting officer and the Attorney-General.*

*(4) If the accounting officer does not respond to the notice to show cause issued under subsection (1) within thirty days of the receipt of the notice, the court shall proceed and commence contempt of court proceedings against the accounting officer.*

*(5) Where the contempt of court is committed by a State organ, government department, ministry or corporation, and it is proved to the satisfaction of the court that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of any accounting officer, such accounting officer shall be deemed to be guilty of the contempt and may with the leave of the court be liable to a fine not exceeding two hundred thousand shillings.*

*(6) No State officer or public officer shall be convicted of contempt of court for the execution of his duties in good faith.”*

45. The Contempt of Court Act is however no longer operative as from the date of the judgment declaring it unconstitutional in **Kenya Human Rights Commission v Attorney General & Another (supra)**. I am therefore obliged to revert to the provisions of the law that operated before the enactment of the Contempt of Court Act, to avoid a lacuna in the enforcement of Court’s orders. It was in this respect observed in *Republic vs. Returning Officer of Kamkunji Constituency & The Electoral Commission of Kenya HCMCA No. 13 of 2008*, that the High Court has the responsibility for the maintenance of the rule of law, hence there cannot be a gap in the application of the rule of law.

46. In addition, where there is a lacuna with respect to enforcement of remedies provided under the Constitution or an Act of Parliament, or if, through the procedure provided under an Act of Parliament, an aggrieved party is left with no alternative but to invoke the jurisdiction of the Court, the Court is perfectly within its rights to adopt such a procedure as would effectually give meaningful relief to the party aggrieved, in exercise of the inherent jurisdiction granted to the Court by section 3A of the Civil Procedure Act to grant such orders that meet the ends of justice and avoid abuse of the process of Court.

47. Lastly, it was also noted in *Kenya Human Rights Commission vs Attorney General & Another (supra)* that the Court has inherent powers to enforce its orders under Article 159 of the Constitution as follows:

*“Article 159 of the constitution recognizes the judicial authority of courts and tribunals established under the constitution. Courts and tribunals exercise this authority on behalf of the people. The decisions courts make are for and on behalf of the people and for that reason, they must not only be respected and obeyed but must also be complied with in order to enhance public confidence in the judiciary which is vital for the preservation of our constitutional democracy. The judiciary acts only in accordance with the constitution and the law (Article 160) and exercises its judicial authority through its judgments decrees orders and or directions to check government power, keep it within its constitutional stretch hold the legislature and executive to account thereby secure the rule of law, administration of justice and protection of human rights. For that reason, the authority of the courts and dignity of their processes are maintained when their court orders are obeyed and respected thus courts become effective in the discharge of their constitutional mandate.*

48. In **Nthabiseng Pheko v Ekurhuleni Metropolitan Municipality & another CCT 19/11(75/2015)**. Nkabinde, j observed that:-

*“The rule of law, a foundational value of the constitution, requires that the dignity and authority of the courts be upheld. This is crucial, as the capacity of courts to carry out their functions depends upon it. As the constitution commands, orders and decisions issued by a court bind all persons to whom and organs of state to which they apply, and no person or organ of state may interfere in any matter, with the functioning of the courts. It follows from this that disobedience towards courts orders or decisions risks rendering our courts impotent and judicial authority a mere mockery. The effectiveness of court orders or decisions is substantially determined by the assurance that they will be enforced.”*

49. In the case of **Canadian Metal Co. Ltd v Canadian Broadcasting Corp (N0.2) [1975] 48 D.L.R (30)**, the court stated that;

*“To allow court orders to be disobeyed would be to tread the road toward anarchy. If orders of the court can be treated with disrespect, the whole administration of justice is brought into scorn... if the remedies that the courts grant to correct... wrongs can be ignored, then there will be nothing left for each person but to take the law into his own hands. Loss of respect for the courts will quickly result into the destruction of our society.”*

50. Courts therefore punish for contempt to insulate its processes for purposes of compliance so that the rule of law and administration of justice are not undermined. Without this power or where it is limited or diminished, the court is left helpless and its decisions would mean nothing. This ultimately erodes public confidence in the courts; endangers the rule of law, administration of justice and more importantly, development of society. That is why the court stated in **Carey v Laiken [2015] SCC17** that;

*“Contempt of court rests on the power of the court to uphold its dignity and process. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect”*

51. It is therefore a fundamental rule of law that court orders be obeyed and where an individual is enjoined by an order of the court to do or to refrain from doing a particular act; he has a duty to carry out that order. The court has a duty to commit that individual for contempt of its orders where he deliberately fails to carry out such orders. (**Louis Ezekiel Hart v Chief George 1 Ezekiel Hart (-SC 52/2983 2nd February 1990)**). And in **Hon. Martin Nyaga Wambora and Another v Justus Kariuki Mate & Another [2014] eKLR**, the Court stated the duty to obey the law by all individuals and institutions is cardinal in the maintenance of rule law and administration of justice.

52. It is therefore clear that the importance of the judiciary in the maintenance of constitutional democracy cannot be overemphasized. In order to achieve this constitutional mandate, the judiciary requires the power to enforce its decisions and punish those who disobey, disrespect or violate its processes otherwise courts will have no other means of ensuring that the public benefit from the judgments they hand down and the orders and or directions made on their behalf. When stripped of this power courts will be unable to guarantee compliance with their processes and will certainly become ineffective in the discharge of their duties and performance of their functions with the ultimate result that the public, as trustees of the rule of law, will be the major victim.

53. I accordingly find that the 2<sup>nd</sup> Respondent was aware of the orders of the court having been entered by consent. I order that notice to show cause be issued against the 2<sup>nd</sup> Respondent to appear before this court on 5<sup>th</sup> of August 2020 to show cause why he should not be punished for failure to obey the orders of this court.

**Dated, Signed and delivered at Bomet this 1<sup>st</sup> day of July 2020.**

**A ONGERI**

**JUDGE**