



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW MISC. APPLICATION NO. 390 OF 2014

REPUBLIC.....APPLICANT

VERSUS

KAJIADO COUNTY.....1ST RESPONDENT

CHIEF OFFICER – TREASURY (FORMERLY FINANCE & ECONOMIC

PLANNING) – KAJIADO COUNTY.....2ND RESPONDENT

COUNTY EXECUTIVE COMMITTEE MEMBER

TREASURY (FORMERLY FINANCE & ECONOMIC

PLANNING) – KAJIADO COUNTY.....3RD RESPONDENT

EX PARTE:

KILIMANJARO SAFARI CLUB LIMITED

RULING

The Applications

1. Kilimanjaro Safari Club Limited, the ex parte Applicant herein, filed an application by way of a Notice of Motion dated 14th December 2018 seeking the following orders:

a) That this Court be pleased to cite for contempt the Chief Officer – Finance and Economic Planning for Kajiado County, Mr. Morris Putita Kaaka and the County Executive Committee Member – Treasury (Formerly Finance and Economic Planning) for Kajiado County, Mr. Michael Semera, the 2nd and 3rd Respondents respectively, for their disobedience of the order of the Honourable Court made on 30th of May 2016, and duly served on both of them, and they be committed to Civil jail for disobedience of the Court Order.

b) That this Honourable Court be pleased to enforce compliance with its own orders in any other way it deems suitable.

c) That the costs of this application be provided.

2. The application was supported by an affidavit sworn on 14th December 2018 by Sandeep R. Desai, the *ex parte* Applicant's General Manager, who explained that the *ex parte* Applicant is the beneficiary of a final Arbitral Award delivered by John M. Ohaga on 5th November 2009, and an award on assessment of costs on the 21st January 2011, which award was adopted as an Order of this Court on 13th December 2011. Further, that the *ex parte* Applicant sought and obtained an order of mandamus on 30th May 2016, which order compelled the Kajiado County and specifically the Kajiado's Chief Officer and County Executive Committee Member for Finance and Economic Planning to settle the decretal sums, as the persons in charge and responsible for ensuring the Court order and decree were satisfied.

3. According to the *ex parte* Applicant, the order of 30th May 2016 and penal notices were initially duly served upon the 2nd and 3rd

Respondents personally, and upon the County Secretary on behalf of the 1st Respondent, and an affidavit of service to this effect dated 27th July 2016 was duly filed on the record. That at the particular time, the County Executive Committee Member in charge of Finance and Economic Planning was, Mr. Kesewe Mapena. However, that after the 2017 elections, Kajiado County appointed a new County Executive Committee Member – Treasury for Kajiado County, namely Mr. Michael Semera, who performs the same role as Mr. Mapena except that the name of the department has changed from ‘Finance and Economic Planning’ to ‘Treasury’. The *ex parte* Applicant averred that as a result of the said changes, its advocates on record extracted a Certificate of Order against Government, and served the Court order dated 13th October 2011, the Certificate of Order against Government dated 29th May 2018 and Penal Notices afresh, on the Respondents and on Mr Michael Semera in particular, and an affidavit of service to this effect was duly filed on the record. The *ex parte* Applicant annexed a copy of the said affidavit of service.

4. However, that the Respondents have deliberately disobeyed the said Court order of 30th May 2016 and there has been no settlement of the decretal sum to date. In addition, that the authority and dignity of this Court is being undermined and eroded by the disobedience of 2nd and 3rd Respondents, and it is in the interest of justice, fairness and good governance that the Court does take all the necessary action against the contemnors to ensure its court order is respected and obeyed.

The Responses

5. The alleged contemnors responded to the said applications. Morris Putita Kaaka the 2nd Respondent, filed a replying affidavit sworn on 20th February 2019, as did Michael Semera, the 3rd Respondent. The 2nd and 3rd Respondents denied being in breach of any court order, and averred that they have at all times complied with and /or acted towards compliance with orders issued by this Court. They also contended that the application herein does not meet the threshold for grant of the orders sought, and that the *ex parte* Applicant has not demonstrated that they acted in contravention to the applicable principles with respect to contempt of Court.

6. According to the 2nd and 3rd Respondents, they were made aware that a court order dated 3rd April 2012 and 16th June 2016, a Certificate of Order against Government dated 29th May 2018 together with a Penal Notice dated 31st May 2018 were served upon the 1st Respondent’s County Secretary’s office, requiring them to satisfy the decree issued by the High Court in **Nairobi High Court Misc. Appl. No. 442 of 2011 –Kilimanjaro Safari Club Limited v The Governor – Kajiado County Government and others** on 13th December 2011. Further, that they instructed their advocates on record, who have been engaging the *ex parte* Applicant in negotiations on settlement of the decretal sum.

7. The 2nd and 3rd Respondents detailed correspondence exchanged and meetings held in this regard, and annexed copies of the correspondence. The said Respondents averred that the last such correspondence was by the *ex parte* Applicant’s Advocates on record, who wrote a letter to their Advocates on record dated 29th January 2019, reiterating that the *ex-parte* Applicant had declined to accept the Respondents’ offer which he deemed to be too low, and suggested a tentative meeting on 5th February 2019.

8. Therefore, that the current situation is that both parties are involved in negotiations aimed at having this matter settled amicably, and that the Respondents were therefore surprised to be served with a Notice to Show Cause in October 2018 during the course of negotiations. Further, that the Respondents have made substantial proposals to the *ex-parte* Applicant herein through its Advocates on record, attempting to satisfy the subject decree and certificate of costs in a bid to settle this matter out of court. As such, the Respondents herein cannot be said to be engaging in conduct that undermines the rule of law, impedes the course of justice or otherwise amount to contempt.

9. The Respondents stated that they are willing to comply with orders of this Court and satisfy the Certificate of Costs and Decree issued by the High Court in **Nairobi High Court Misc. Appl. No. 442 of 2011 –Kilimanjaro Safari Club Limited v The Governor – Kajiado County Government and Others** on 13th December 2011. They however urged the Court to indulge them to satisfy the said Certificate of Costs and Decree as per a settlement proposal that parties can agree upon by way of ongoing negotiations. The Respondents seek such indulgence to enable the maintenance of a balance between settling the decretal sum and offsetting debts accrued by its predecessor and the financing of recurrent and development expenditure, as well as to ensure that the operations of the 1st Respondent herein remain sustainable and for the benefit of the 1st Respondents residents.

10. The Respondents also cited provisions of the Constitution, County Government Act, County Appropriations Act and Public Finance Management Act, to support their averments that they do not have a final say on where to direct allocation of funds or how to pay off debts incurred by the 1st Respondent’s predecessors, since prior approval of such payments in the budget estimates by the County Assembly of the 1st Respondent has to be made. Further, that they cannot make any payments from any money not approved in the budget, and that has not been appropriated under the County Appropriation Act.

The Determination

11. This Court directed that the instant application be canvassed by way of submissions which were highlighted during a hearing held on 2nd April 2019. Kairu & Mc Court Advocates for the *ex parte* Applicant filed submissions dated 14th March 2019, while Yunis Mohammed & Associates, the Advocates for the Respondents filed submissions dated 29th April 2019.

12. The *ex parte* Applicant submitted that the Respondents have admitted that there has been no settlement of the decretal sum to date, and they have all along been aware of this claim from the time they took office, therefore their shock and surprise to be served with the Notice to Show Cause why they should not be cited for contempt is feigned. The *ex parte* Applicant further submitted that the letters and correspondences from the *ex parte* advocates produced by the Respondents were clearly marked “without prejudice”, and the same cannot be produced and should be expunged. Reliance was in this regard placed on the case of **Kawamabanjo Limited vs. Chase Bank (Kenya) Limited and Another [2014] eKLR** where the Court struck out letters which were marked “Without Prejudice” relating to negotiations not covered under a subsequent contract between parties.

13. Further, that the representatives of the Respondents have been negotiating from 2017 to date, and have not followed through or even demonstrated any serious intention to settle. It was thus submitted that the 2nd and 3rd Respondent's Replying Affidavits are yet another attempt to buy or waste time, and that whether negotiations occur or not is not relevant to the application before the Court, as the said negotiations are not mandatory.

14. According to the *ex parte* Applicant, the 2nd and 3rd Respondents' list of its alleged pending debts is not genuine nor verifiable, as *inter alia* it was not on official letter head or stamped or signed by the County officials, and the 2nd and 3rd Respondents have failed to explain or show to the Court how the County's revenues balanced against the alleged pending Bills. Furthermore, that the 2nd and 3rd Respondents being the accounting officers in the County have the duty to ensure that the debts of the County are repaid especially one that it has owed from 2009, and are aware of the County processes and procedures that they ought to have commenced under the Public Finance Management Act to meet the debt, but have failed to do so and have failed to indicate any actions taken to do so.

15. In addition, that the 2nd and 3rd Respondents have failed to indicate any timelines they require to have the necessary budgets approved and provide for the repayment of the debt. That it is clear therefore, that they have no intention to comply with the Court order. The decisions in **Republic vs. County Chief Officer Finance and Economic Planning Nairobi County Council and Other, Ex-Parte David Mugo, [2018] eKLR**, and **Gateway Insurance Co. Limited vs. Luke Gatimu (Chief Officer Finance and Economic Planning & 3 Others [2016] eKLR** for the holding that failure to satisfy the Court orders can only lead to a presumption of contempt.

16. In conclusion, the *ex parte* Applicant submitted that the authority and dignity of this Court is being undermined and eroded by the disobedience of 2nd and 3rd Respondents, and it is in the interest of justice, fairness and good governance that this Court take all the necessary action against the contemnors to ensure its court order is respected and obeyed. Further, that the *ex parte* Applicant continues to suffer financial loss every day it is unable to realize the just rewards of its judgment.

17. The Respondents and alleged contemnors on the other hand relied on various definitions of the term "contempt of court" to submit that they have not had ample time and adequate notice to settle the decretal sum, as the order of mandamus compelling the 1st Respondent to settle the decretal amount was obtained on 30th May 2016. However, that the current sitting County Government only came to office subsequent to the 2017 general elections and thus began its operations towards the end of the 2017 year, at a time when budgetary allocations for that financial year had already been made by the previous county government. Further, that the *ex parte* Applicant thereafter extracted a Certificate of Order against Government dated 29th May 2018, which was served upon the 2nd and 3rd Respondents together with the court order dated 13th October 2011 on 6th June 2018, and the 2nd and 3rd Respondents Advocates on record thereupon engaged the *ex parte* Applicant's Advocates in a bid to settle the decretal amount out of court.

18. Therefore, that based on the time when the Respondents herein took office, got served with the said orders and Penal Notices on 6th June 2018, and based on the Respondent's conduct pursuant to the invitation to negotiations, it is clear that the Respondents have not only had limited time to settle the decretal amount but have taken steps in attempting to settle the decretal amount. Further, that their conduct has been one as to show compliance with the court orders albeit in a mitigated and sustainable manner, and cannot be said to amount to **willful defiance of or disrespect towards the court**. **Reliance was placed on the decision of Clyde L. J. in Johnson v Grant (1923) SC 789 at 790 that the objective of contempt proceedings is preserving and safeguarding the rule of law, and for the submission that no action by the Respondents can be said to consist of interfering with the administration of the law or impeding or preventing the course of justice.**

19. On the letter that were written by the *ex parte* Applicant on a "without prejudice" basis and whether they ought to be expunged, the Respondents submitted that the *ex parte* Applicant has acknowledged in its own submissions that they sought to indulge the Respondents Advocates to have the instant suit amicably settle out of court, and the said fact is not in dispute. That the only issues in dispute is as to why the *ex parte* Applicant has sought to institute the instant contempt proceedings having intimated their intention to have the decretal sum settled out of court. Further, that the *ex parte* Applicant's quest to have documents expunged is an attempt to conceal the time when the negotiations with the current county government began, and also an attempt to conceal the misrepresentation on whether or not an offer had been made by the Respondents towards settling the decretal amount.

20. The Respondents further submitted that the impugned list of pending bills was filed in the 2nd and 3rd Respondents Replying Affidavits under oath, and the same were not contested by the *ex parte* Applicant vide a supplementary affidavit. As such, that the allegations and arguments that the said bills are not stamped, are not on an official letterhead, and that the origin of the said bills is not known does not hold true, and that the *ex parte* Applicant has at no point sought to cross-examine the deponents of the said Replying Affidavits to ascertain as to whether the same originate from the 1st Respondent herein. Therefore, that the same stands unchallenged.

21. Furthermore, that the said list of pending bills was annexed to the 2nd and 3rd Respondent's Replying Affidavit on 20th February 2019, and as such budget estimates were yet to be placed before the 1st Respondent's county assembly for approval as mandated by law. The Respondents asked the Court to take judicial notice of the fact that budget approvals and disbursements of funds occur at the end of financial years which is at the 30th of June each year. Therefore, that the *ex parte* Applicant cannot allege that the 1st Respondent is attempting to conceal its revenues, when the budgetary allocations which remained uncertain were yet to be disbursed to it.

22. In conclusion, the Respondents submitted that the *ex parte* Applicant is not entitled to the orders sought for reasons that it has failed to satisfy the principles/considerations that ought to be taken into account in an application for contempt of Court as held in **Cecil Miller v Jackson Njeru & Anor (2017) e KLR**. According to the Respondents, the instant contempt proceedings are malicious and are aimed at placating the *ex parte* Applicant rather than upholding the rule of law, and there is no action that has been proved to the required standard that shows the Respondents herein are acting in a manner that threatens the preservation and safeguarding of the rule of law.

23. I have considered the pleadings and submissions made by the *ex parte* Applicant, Respondents and alleged contemnors, and need to clarify at the outset the applicable law with regards to contempt of Court. The power of this Court to punish for disobedience of its orders is

expressly provided for in section 36 (1) of the High Court (Organization and Administration) Act which provides as follows:

“(1) A person who –

(a) assaults, threatens, intimidates or willfully insults a judge, judicial officer or a witness, involved in a case during a sitting or attendance in a court, or while the judge, judicial officer or witness is travelling to and from a court;

(b) willfully and without lawful excuse disobeys an order or directions of the court in the course of the hearing of a proceeding;

(c) within the premises in which any judicial proceeding is being heard or taken, or within the precincts of the same, shows disrespect, in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being heard or taken;

(d) having been called upon to give evidence in a judicial proceeding, fails to attend, or having attended refuses to be sworn or to make an affirmation, or having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document, or remains in the room in which such proceeding is being heard or taken after the witnesses have been ordered to leave such room;

(e) causes an obstruction or disturbance in the course of a judicial proceeding;

(f) while a judicial proceeding is pending, makes use of any speech or writing misrepresenting such proceeding or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority taken;

(g) publishes a report of the evidence taken in any judicial proceeding that has been directed to be held in private;

(h) attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he or she has given evidence in connection with such evidence;

(I) dismisses a servant because he or she has given evidence on behalf of a party to a judicial proceeding; or

(j) commits any other act of intentional disrespect to any judicial proceedings, or to any person before whom such proceeding is heard or taken, commits an offence.

24. **Section 39 (2) (g) of the Act** enjoins the Chief Justice to make Rules to provide for, among other things, the procedure relating to contempt of court. However, the rules to regulate the commencing and prosecuting of contempt of court applications under the Act are yet to be made. The law that previously applied in this regard was the Contempt of Court Act of 2016, until the decision of the High Court (J. Chacha Mwita) made on 9th November 2018 in **Kenya Human Rights Commission v Attorney General & Another, [2018] e KLR**. The said decision declared the Contempt of Court Act of 2016 invalid for lack of public participation as required by Articles 10 and 118(b) of the Constitution, and for encroaching on the independence of the Judiciary.

25. I am in the circumstances 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. 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.

26. The applicable law as regards contempt of court existing before the enactment of the *Contempt of Court Act* was restated by the Court of Appeal in **Christine Wangari Gachege vs. Elizabeth Wanjiru Evans & 11 Others, [2014] eKLR**. In that case the Court found that the English law on committal for contempt of court under Rule 81.4 of the English Civil Procedure Rules, which deals with breach of judgment, order or undertakings, was applied by virtue of section 5(1) of the Judicature Act which provided that:

“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.”

27. This section was repealed by section 38 of the Contempt of Act of 2016, and as the said Act has since been declared invalid, the consequential effect in law is that it had no legal effect on, and therefore did not repeal section 5 of the Judicature Act, which therefore continues to apply. In addition, the substance of the common law is still applicable under section 3 of the Judicature Act. This Court is in this regard guided by the applicable English Law which is Part 81 of the English Civil Procedure Rules of 1998 as variously amended, and the requirement for personal service of court orders in contempt of Court proceedings is found in Rule 81.8 of the English Civil Procedure Rules.

28. The said rule provides that unless the court dispenses with service, a judgment or order may not be enforced by way of an order for committal unless a copy of it has been served on the person required to do or not do the act in question. Rule 81.6 of the English Civil Procedure Rules specifically provides that the method of service shall be personal service, which is effected by leaving the order with the

person to be served. This Court notes that Kenyan courts have also held that personal service of orders and a penal notice is a requirement in contempt of court proceedings, and reference is made to the Court of Appeal decisions in Nyamogo & Another v Kenya Posts and Telecommunications Corporation, (1994) KLR 1, and Ochino & Another v Okombo & 4 others (1989) KLR 165 in this respect.

29. It is also the position, and it has been held in several judicial decisions, that if personal awareness of the court orders by the alleged contemnors is demonstrated, they will be found culpable of contempt even though they had not been personally served with the orders and penal notice. See in this regard the decisions in Kenya Tea Growers Association vs Francis Atwoli & Others, Nairobi High Court Constitutional Petition No 64 of 2010, Husson v Husson, (1962) 3 All E.R. 1056, Ronson Products Ltd v Ronson Furniture Ltd (1966) RPC 497, and Davy International Ltd vs Tazzyman (1997) 1 WLR 1256.

30. The first issue for determination in the present application arising from the requirement of knowledge of the orders, is whether the 2nd and 3rd Respondents were served with, or aware of the orders issued herein on 16th June 2018. The *ex parte* Applicant annexed copies of affidavits of service sworn on 27th July 2016 and 21st June 2018 by Kizito Shitsama Bukhala, a licenced Court process server. Upon perusal, I note that the said affidavits do not attest to personal service on the 2nd and 3rd Respondents, but on their personal assistants, and on the personal assistant to the County Attorney/County Secretary.

31. However, this fact of lack of personal service notwithstanding, the 2nd and 3rd Respondents admit to being aware of the said orders in their replying affidavits, wherein they state that on 6th June 2018 they were made aware that a court order dated 3rd April 2012 and 16th June 2016, a Certificate of Order against Government dated 29th May 2018 together with a Penal Notice dated 31st May 2018 were served upon the 1st Respondent's County Secretary office requiring the Respondents to satisfy the decree issued by the High Court in Nairobi High Court Misc. Appl. No. 442 of 2011 – Kilimanjaro Safari Club Limited v The Governor – Kajiado County Government and others on 13th December 2011. The awareness of the orders by the 2nd and 3rd Respondents is therefore not disputed.

32. The issue in dispute is whether the 2nd and 3rd Respondents have breached the said orders for committal orders to issue. As regards this issue, the applicable legal principles on culpability for contempt of court are that no person will be held guilty of contempt for breaking an order, unless the terms of the order are themselves clear and unambiguous as held in Iberian Trust Ltd vs Founders Trust and Investment Co. Ltd (1932) 2 KB 913. Furthermore, if the court is to punish anyone for not carrying out its order, the order must in unambiguous terms direct what is to be done. It was held in Radkin-Jones vs Trustee of the Property of the Bankrupt, (1965) 109 Sol. Jo. 334 that an order should be clear in its terms, and should not require the person to whom it is addressed to cross-refer to other material in order to ascertain its precise obligation.

33. In the present application, the order alleged to be breached was given on 30th May 2016 and issued on 16th June 2016 as follows:

“That an order of mandamus is hereby issued compelling the Kajiado County and specifically the Chief Officer- Finance and Economic Planning, Mr. Morris Putita Kaaka and the County Executive Committee Member, Keswe Mapena, to satisfy the decree and certifies costs issued by the High Court in Nairobi HC Misc. Appl. No. 442 of 2011- Kilimanjaro Safari Club Limited vs The Governor, Kajiado County and others on 13th December 2011”

While the terms of the order are clear, it is evident that the 3rd Respondent is not a subject of the order as it is not addressed to him, but to a different third party who is not a party in this proceedings. The *ex parte* Applicant explained that after the 2017 elections, Kajiado County appointed a new County Executive Committee Member – Treasury for Kajiado County, namely Mr. Michael Semera, who performs the same role as Mr. Mapena except that the name of the department has changed from ‘Finance and Economic Planning’ to ‘Treasury’. Given that the terms of the order were specific as regards the persons to whom it was directed, the *ex parte* Applicant ought to have moved the Court for a review of the orders in light of the changed circumstances to bind the 3rd Respondent to its obedience. As the order now stands, the 3rd Respondent is not required to do or refrain from doing any act, and cannot therefore be found to be culpable of disobedience of the said order.

34. As regards the 2nd Respondent, the order is addressed to him personally, and the question therefore which needs to be answered is whether he has breached the said order. In this regard, the act or omission constituting disobedience of an order may be intentional, reckless, careless or quite accidental and totally unavoidable. An intentional act may be done with or without an intention to disobey the order, and with or without an intention to defy the court. Therefore, the element of contumacy, which requires flagrant defiance of, the authority of the court, is no longer necessary to establish breach of a court order. It is now established that the mental element for liability for contempt arising out of disobedience is simply that the disobeying party either intended to disobey, or made no reasonable attempt to comply with the order. See in this respect the English House of Lords decision in Heatons Transport (St Helens) Ltd vs Transport and General Workers Union (1973) AC 15.

35. On the applicable standard of proof required to establish such a breach, it was held in Mwangi H.C. Wangonde vs Nairobi City Commission, Nairobi Civil Appeal No. 95 of 1998 that the threshold of proof required in contempt of Court is higher than that in normal civil cases, and one can only be committed to civil jail or otherwise penalized on the basis of evidence that leaves no doubt as to the contemnor's culpability. Likewise, it was held as follows by the Court of Appeal in Woburn Estate Limited vs Margaret Bashforth [2016] eKLR:

“We reiterate that contempt proceedings being of quasi –criminal in nature and since a person may lose his right to liberty, each stage and step of the procedure must be scrupulously followed and observed. We bear in mind the often-cited passage attributed to Lord Denning In Re Bramblevale Ltd [1970] 1 CH 128 at page 137 that;

“ A contempt of court is an offence of criminal character. A man may be sent to prison for it. It must be satisfactorily proved showing that when the man was asked about it, he told lies. There must be some further evidence to incriminate him.”

36. The 2nd Respondent has gone to great lengths to explain the actions they have taken to negotiate settlement of the orders given by this Court, and the budgetary and financial difficulties they face in meeting their debt obligations. The *ex parte* Applicant admits that there have been on-going negotiations to settle the matter. The Court's finding on the legal significance of these facts is three-fold.

37. Firstly, non-allocation of funds is not an acceptable defence or justifiable excuse for non-payment of decretal sums ordered to be paid by the Court, in the absence of any evidence of any attempts made by the responsible Government official to commence the process of such allocation. Secondly, while a **party facing financial constraints is at liberty to move the Court for appropriate orders which would enable it to settle its obligations while staying afloat, financial difficulty is only a consideration when it comes to determining the mode of settlement of a decree. Lastly, the fact of non-payment of the decretal sum is not contested in the present application, and the Respondents in this respect asked the Court for time to settle the decretal sum .**

38. I accordingly find that to the extent that the 2nd Respondent has not taken any steps to effect payment of the decretal sum or any part thereof to the *ex parte* Applicant since the issue of the orders of this Court in June 2016, he is culpable of disobedience of this Courts orders. However, given the Respondent's request to be given more time to negotiate and effect the said payments, and the history of negotiations in this regard between the parties, the Court will grant him the opportunity to purge the contempt, and as a way of mitigating the sentence.

39. I accordingly order as follows:

(i) The Chief Officer – Finance and Economic Planning for Kajiado County, Mr. Morris Putita Kaaka who is the 2nd Respondent herein, is culpable for contempt of Court for disobedience of the order of this Court made on 30th May 2016 and issued on 16th June 2016.

(ii) The 2nd Respondent's sentencing for contempt of court is suspended for a period of one year from the date of this ruling, pending any actions the said Respondent may want to take to purge the contempt.

(iii) Further directions will be given by this Court after one year, as to the date for sentencing of the 2nd Respondent, and upon hearing the *ex parte* Applicant and 2nd Respondent on any actions taken to purge the contempt.

(iv) The 1st and 2nd Respondents shall meet the costs of the Notice of Motion dated 14th December 2018.

40. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 10TH DAY OF JULY 2019

P. NYAMWEYA

JUDGE