



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CIVIL APPEAL NO.4 OF 2007**

**ASMAN N. WALUHBUKA.....1<sup>ST</sup> APPELLANT**

**SHABAN N. ECHESA.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**TIMOTHY MISIKOI.....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. This matter came up for directions on 21<sup>st</sup> March, 2017 when the advocate appearing for the appellants *Mr Masake* informed the court that there was an order issued by the court on 13<sup>th</sup> December 2016. That the order was served but that the officer who was served with the order has not complied with it. He prayed for the court to declare the officer who has not complied with the order to be in contempt of court and warrant of arrest do issue to him.

2. I have perused the court file but I have not seen any order issued on 13<sup>th</sup> December 2016. The order that I can see in the file is the one issued on 24<sup>th</sup> November, 2016 where it was ordered that the accounting officer at the Office of the President do show cause why he should not be held in contempt for failure to pay the decretal sum awarded in this case.

3. On the 6<sup>th</sup> December, 2016, the advocate for the appellants *Mr Kasamani* told the court that the order had been served and that the respondent had not appeared. The court then ordered that the order be implemented by payment of the decretal sum in 60 days from 6<sup>th</sup> December, 2016 in default the officer concerned to be held in contempt of court.

4. There is a return of service in the court file by Mr Charles Lutta Kasamani indicating that he served copies of this court's order dated 24<sup>th</sup> November 2016 on a legal officer in the office of the president on the 28<sup>th</sup> November 2016.

However there was no return of service on the order of the court issued on 6<sup>th</sup> December 2016. The application by Mr Masake for the accounting officer in the Office of the President to be held in contempt of court for failure to pay the decretal sum cannot hold as there is no evidence that the said order was served on the concerned officer. In the foregoing the application to declare the said officer to be in

contempt is untenable. I thereby order that the order dated 6<sup>th</sup> December, 2016 be served on the concerned officer.

**Delivered, signed and dated at Kakamega this 20<sup>th</sup> day of July, 2017.**

J. NJAGI

JUDGE

In the presence of:

N/A..... for appellants

N/A..... for respondents

Paul..... court assistant

Appellants ..... absent

Respondents ..... /absent