



**REPUBLIC OF KENYA**

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

**CRIMINAL MISC. APPL. CASE NO.221 OF 2013**

**SHEM OTIENO..... APPLICANT/RESPONDENT**

**VERSUS**

**RICHARD NGOMA ORERO.....1<sup>ST</sup> RESPONDENT/APPLICANT**

**BENARD OYUGI OKETCH KENDO.....2<sup>ND</sup> RESPONDENT/APPLICANT**

**RULING**

1. On **8<sup>th</sup> July 2015**, this court (*differently constituted*) found the Respondents herein **RICHARD NGOMA ORERO** and **BENARD OYUGI OKETCH KENDO** guilty of contempt of court after they failed to obey the court's orders of stay of execution issued on 26<sup>th</sup> August 2013.
2. The court then ordered the Respondents to appear in court on 12<sup>th</sup> October 2015 so that they could offer their mitigation and show cause why they cannot be sent to jail for contempt of court as is required by the law.
3. On **12<sup>th</sup> October 2015**, the Respondents did not appear in court but their advocate Mr. Nyatundo appeared for them and sought for another date for mitigation while stating that the Respondents may not have been made aware of the ruling or the date as they were not present when the same was delivered. The matter was then adjourned to 30<sup>th</sup> October 2015 for mitigation before sentencing.
4. On 30<sup>th</sup> October, 2015, Mr. Nyatundo once again appeared in court but the Respondents did not turn up whereupon Mr. Nyatundo stated that the 1<sup>st</sup> Respondent was unwell, bedridden and could not attend court. There was no explanation given for the absence of the 2<sup>nd</sup> Respondent from court and neither was any documentary proof given in support of the 1<sup>st</sup> Respondent's alleged illness. All the same the court gave the Respondents the benefit of the doubt and rescheduled the mention on 11<sup>th</sup> December 2015.
5. Come 11<sup>th</sup> December 2015, the Respondents did not appear in court yet again and their advocate Mr. Nyatundo for the 2<sup>nd</sup> time sought for another mention citing the illness and old age of the 1<sup>st</sup> Respondent. No explanation was offered for the absence of the 2<sup>nd</sup> Respondent from the court and neither was any documentary proof given to support the 1<sup>st</sup> Respondent's alleged illness. The court then granted the Respondents a last adjournment and set a new mention date for 2<sup>nd</sup> February 2016.
6. Today 2<sup>nd</sup> February 2016, the Respondents still failed to turn up in court for the very same reasons that the 1<sup>st</sup> Respondent is unwell and with a new strange twist that the 2<sup>nd</sup> Respondent had gone for a funeral

and was on his way to court. Mr. Nyatundo for the Respondents indicated that the 2<sup>nd</sup> Respondent would be in court at 3.00 p.m.

7. I note that a keen look at the sequence of events following the delivery of the ruling that adjudged the Respondents' guilty of contempt of court clearly shows that the Respondents are merely avoiding appearing in court under the guise of false and lame excuses not supported by any cogent proof. I hold that if indeed the 1<sup>st</sup> Respondent is ailing, nothing could have been easier to do than to avail to the court his doctor's report or treatment record in support of his alleged illness.

8. As regards the 2<sup>nd</sup> Respondent, no reasons have been advanced for his continued absence from court when required to attend save for the latest turn of events that he had gone for a funeral. It is note-worthy that the 2<sup>nd</sup> Respondent's counsel did not even bother to inform the court whose funeral, if any, the 2<sup>nd</sup> Respondent had attended on a Tuesday morning.

9. The conduct of the Respondents since the delivery of the ruling of 8<sup>th</sup> July 2015 clearly portrays them as parties who are full of impunity for the due of process of court and have no qualms about disobeying court orders and summons. This conduct of the Respondents goes against the fair administration of justice and is an open mockery and affront to the rule of law and the authority of the court.

10. It is for the above reasons that I hereby order that warrants of arrest be issued against the Respondents herein forthwith and such warrants be executed by the DCIO – Kisii Police Station.

**Dated, signed and delivered in open court this 2<sup>nd</sup> February 2016**

**HON. W. OKWANY**

**JUDGE**

**In the presence of:**

- Miss. Moguche for the Applicant.
- in person
- Omwoyo: court clerk