



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

Judicial Review No. 392 Of 2016

IN THE MATTER OF: THE APPLICATION BY PLANET MOTORS COMPANY LIMITED FOR JUDICIAL REVIEW ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS AGAINST THE DECISIONS OF THE DIRECTOR OF IMMIGRATION SERVICES AND THE CABINET SECRETARY FOR INTERIOR AND CO-ORDINATION OF NATIONAL GOVERNMENT.

AND

IN THE MATTER OF: ARTICLES 22, 23, 27, 29, 39, 47, 50(1) AND 165 (3) (b) & (6) OF THE CONSTITUTION.

AND

IN THE MATTER OF: SECTIONS 10 & 11 OF THE FAIR ADMINISTRATIVE ACTION ACT, No. 4 OF 2015, LAWS OF KENYA.

AND

IN THE MATTER OF: KENYA CITIZENSHIP AND IMMIGRATION ACT, CAP 172 OF THE LAWS OF KENYA, AND REGULATIONS THERE UNDER.

BETWEEN

REPUBLIC.....APPLICANT

AND

DIRECTOR OF IMMIGRATION SERVICES1ST RESPONDENT

CABINET SECRETARY FOR INTERIOR

AND CO-ORDINATION GOVERNMENT2ND RESPONDENT

PLANET MOTORS COMPANY LIMITEDEXPARTE APPLICANT

AND

SAJJAD AHMAD.....INTERESTED PARTY

JUDGMENT ON CONTEMPT OF COURT

1. By an application dated 6th September 2016 brought under Section 5 of the Judicature Act and all enabling provisions of the law, the ex parte applicant Planet Motors Limited seek from this court orders that:

a) the Director of Immigration Services, Principal Immigration Officer In charge of JKIA on the night of 3rd September 2016 and the Officer in charge of station JKIA Police Station be committed to prison for 6 months or such period as the court shall determine for contempt of the orders of this court dated 30th August 2016;

b) That the Interested Party Sajjad Ahmad be allowed safe passage into the country at the alleged contemnor's cost and to offer an apology for the humiliating/embarrassing the oppressive treatment of the interested party by forcibly, irregularly and unlawfully removing him from the country;

c) That the court do issue any other such further order as it shall deem just in the circumstances; and

d) That costs be provided for.

2. The application is predicated on the grounds that on 30th August 2016 this court issued orders inter alia, that the leave granted herein shall operate as stay of enforcement of any decision by the respondents until the motion for Judicial Review if filed, is heard and determined inter partes; That the ex parte applicant promptly served the respondents with the orders herein on 31st August 2016 together with a notice of penal consequences; and that the respondents duly acknowledged service; That consequently, the ex parte applicant arranged for a visit by that the Interested Party who is its director in the country for purposes of the pending work permit application and related matters; That on 3rd September 2016 the Interested Party returned to the country from Dar esalaam Tanzania following the orders of this court issued on 31st August 2016; and that on his arrival at Jomo Kenyatta International Airport (KIA) he applied for the visa but the 1st respondent upon receipt of the Interested Party's visa application, acting through the Principal Immigration Officer in charge of JKIA on the night of 3rd September 2016 arrested the Interested Party in collusion with 2 unnamed police officers from JKIA Police Station and detained him overnight at the respondent's holding facility within the airport, and dismissed the orders of this court as not being orders; that on 4th September 2016 the 1st respondent acting through the said immigration officer hurriedly booked the Interested Party on a return flight back to Dar esalaam in willful and flagrant disobedience of court orders which is contemptuous of court orders; That the Interested Party was never accorded any hearing before being denied entry into the country and that he was instead being returned to Tanzania despite owning business in this country which employs many Kenyans; the pendency of this case and his pending work permit appeal; that the actions of the respondents are prejudicial to the applicants and may lead to closure of the business operations hence, loss of employment and livelihoods unless the contempt is purged; that those actions of the respondents are denying the applicants the benefit of the law and the court orders, court processes and due process; and that the respondents have made a mockery of court orders and court processes which ridicules the dignity of the court.

3. The application is further supported by the supporting affidavit of Maratab Bashir, the Managing Director of the applicant company reiterating the grounds in support of the application and giving a narration of how the interested party was treated on arrival at the JKIA, while annexing an affidavit of service sworn by Salmon Achola a court process server sworn on 1st September 2016; evidence of service of the orders of 30th August 2016; a letter dated 5th September 2016 and copy of passport for the interested party; a letter of invitation into the country dated 3rd September 2016; the Interested Party's Boarding pass for 3rd September 2016 from Dar esalaam to JKIA and for 4th September 2016 from JKIA to Dar salaam via Kenya Airways (KQ.).

4. despite service of the application upon the respondents/alleged contemnors, there was no appearance in court on 21st September 2016 when the application was fixed for interpartes hearing by the court.

5. Mr Miyare counsel for the applicant prosecuted the application for contempt of court and submitted that this court did on 30th August 2016 issue orders of leave to apply for Judicial Review Orders and also granted to the applicant stay of enforcement of the decision of the 1st respondent to place the Interested Party on the immigration watch list and the refusal thereof to consider his appeal for class G work permit.

6. Mr Miyare submitted that the order of stay was served on the respondents on 31st August 2016 and that as at that date, the interested party was out of the country, having been barred by the respondents to enter the country on the grounds inter alia, that the ***“Interested Party’s intended role/duty could be performed by a local as opposed to a foreign employee.”***

7. According to the applicant, the orders of this court impugned the respondent to stay any decision until the substantive motion was heard and determined. It was submitted that the substantive motion will be rendered nugatory unless the orders sought are granted.

8. Mr Miyare also submitted that after filing this application for contempt the respondents tried to reach out to the Interested Party giving him a visitor’s pass which is expiring in 2 weeks. He prayed that the respondents be ordered to purge their contempt before they are heard and that if possible, they should grant the Interested Party a special pass.

DETERMINATION

9. I have carefully considered the application by the exparte applicant seeking that the respondents or their agents/servants purge the contempt of court for disobeying orders of this court made on 30th August 2016 and that they be cited and punished for disobeying the said court orders by barring the Interested Party from entering the country.

10. It is not disputed that on 30th August 2016 this court issued orders staying the decision of the respondents as per the Judicial Review orders which were intended in the 9 prayers namely:

- i. The decision purporting to vary Mr Sajjad Ahmad’s pass under Rules 26(3) of the Kenya Citizenships and Immigration Regulations, 2012 signified by the 1st respondent’s embossment dated 6th May 2016 on Mr Sajjad’s passport No. FF 1150882;
- ii. The 1st respondent’s decision placing Sajjad Ahmad on the immigration watch list communicated to the applicant verbally sometimes in July 2016.
- iii. The decision of the 2nd respondent to return to the 1st respondent for his review and recommendations;
- iv. Removal of Mr Sajjad Ahmad from its immigration “watchlist.”
- v. To allow the applicant’s appeal dated 16th June 2016 for class G permit on behalf of Mr Sajjad Ahmad.
- vi. To discharge its mandate and impartially consider the applicant’s application dated 16th June 2016 for class-G permit on behalf of Mr Sajjad Ahmad, independent of the recommendations of the 1st applicant.
- vii. From arbitrarily arresting detaining, harassing and or deporting Mr Sajjad Ahmad or in

any manner whatsoever curtailing/ impending Mr Sajjad's Ahmad's liberty/freedom of movement with regard to the matters herein.

viii. Declaration that the rejection of the applicants application for class- G work permit on behalf of Mr Sajjad Ahmad due to failure by the applicant to disclose a previous application; Confiscating Mr Sajjad Ahmad's passport No. FF1150882 and varying his pass thereby causing Mr Sajjad Ahmad's unfair removal from the country, and placing him on the immigration watch list and refusal to promptly consider his appeal for class G work permit on his behalf are a breach of the applicant's rights to fair administrative action, freedom and security of the Interested Party's person, right to freedom of movement and right to secure protection of the law;

ix. A declaration that the variation of the Interested Party's pass before expiry and his consequent removal from the country without any lawful reasons/cause, and without a formal process and or notice as contemplated under Rule 26 (3) of the KCI Regulations 2012 was a violation of the Interested Party's rights and fundamental freedoms.

11. The question for determination is whether the respondents are in contempt of court orders made on 30th August 2016 and whether they should be punished for such contempt.

12. Contempt is defined by Black's Law Dictionary Ninth Edition as:

“ Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”

13. It is trite that all persons are subject to the law. In **Teachers Service Commission V Kenya National Union of Teachers & 2 Others [2013] e KLR**, Ndolo J observed that.

“ the reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it aboutthe applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law.”

14. This court is in total agreement with the above persuasive observation by my sister judge of the Employment and Labour Relations Court and add that courts of law are vested with the power to punish for contempt of court in order to safeguard the rule of law in the administration of justice and in order to maintain the supremacy of the law and respect for law and order in our society.

15. It is therefore the duty of the courts to ensure that citizens bend to the law and not vice versa since the failure to obey the law would create chaos in the society. A party who obtains an order of the court expects that the order shall be obeyed by those to whom it is directed. A court order once issued by the court binds all and sundry and is expected to be obeyed. Court orders are never issued in vain and neither are they foolhardy.

16. A party who is served with a court order must obey that order and do what the order commands him/her to do or refrain from doing what the order has restrained him/her from doing and seek to challenge that order, in the event that the order appears to be oppressive.

17. In Kenya, there exist two legal regimes for punishing a contemnor. The first legal regime can be found in Section 5 of the Judicature Act and Section 63(e) of the Civil Procedure Act. Section 5 of the Judicature Act provides 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.”

18. The above provisions apply to all types and forms of contempt. On the other hand, Section 63(e) of the Civil Procedure Rules provides that:

“In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed.

a.

b.

c. Grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold.”

19. The other regime for punishing for contempt of court is Order 40 Rule 3(1) of the Civil Procedure Rules which provides that:

“In case of disobedience, or breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release.”

20. In the instant case, from the judicial Review orders being sought as per the leave granted on 30th August 2016, it is my humble view that the alleged breach or violation is in respect of the decision by the respondents relating to prayer No. VII which seeks as follows:

“ vii. an order of prohibition to prohibit the respondents acting either in person or through their servants, agents, police officers, employees or anyone else claiming to derive such authority from the respondents from arbitrarily arresting, detaining, harassing and/or deporting Mr Sajjad Ahmad or in any manner whatsoever curtailing impeding Mr Sajjad Ahmad’s liberty/ freedom of movement with regard to the matters herein.”

21. The above prayer for which leave was granted by this court to commence Judicial Review proceedings is in the form of a restraining or prohibitory injunctive order and therefore when the court granted a stay of enforcement of any decision by the respondents affecting the interested party, the order clearly among others prohibited the respondents from arresting or detaining or deporting the interested party or in any manner curtailing his freedom of movement until the substantive motion once filed is heard and determined interpartes.

22. From the application and grounds put forward by the applicant in this application, it is claimed that the respondents despite being served with the orders of this court dated 30th August 2016, when the interested party landed at JKIA on 3rd April 2016 from Dar-esalaam, Tanzania, he was arrested and detained until 4th September 2016 when he was put on the next flight and deported back to Dar esalaam, Tanzania, the country from which he has come from.

23. It is not denied that the interested party is a director of one of the biggest companies registered in this country and dealing in the importation and sale of motor vehicles from Japan.

24. It is also not in dispute that the said company employs about 15 Kenyans as sales persons, automotive mechanics and maintenance staff and office support staff besides the security team.

25. From what is disclosed in the applicant’s affidavit, it is possible that the Immigration Department has got issues with the Interested Party’s status in this country and that is why they have verbally communicated to him that he is on the watch list.

26. Nonetheless, those issues appear to be work related and not that the Interested party is a security risk for if it was the latter case, I see no reason why the respondents should not have filed a challenge to these proceedings for this court's consideration.

27. That notwithstanding, the Interested Party has subjected himself to the jurisdiction of this court as a law abiding immigrant, seeking for resolution of the dispute over his status, while complaining that in the process of determining his status in the country, the respondents are violating his rights which are guaranteed in the Constitution of Kenya, 2010.

28. That being the case, the respondents having been served with a court order prohibiting them from arresting and or detaining and deporting the Interested Party are bound to obey the court order and come to court to challenge it. In the alternative, if the respondents have any reason to believe that the interested party was a security risk, they should have arrested him on his arrival at JKIA and brought him to court with a sworn affidavit detailing the reasons why it was necessary to arrest him contrary to the court orders prohibiting such arrest.

29. On the evidence presented before this court, I am satisfied that the respondents were on 31st August 2016 served with the court order issued by this court on 30th August 2016 which order was clear. I am equally satisfied that the said court order had a penal notice warning of the consequences of disobedience thereof.

30. I am also satisfied on the material presented by the applicant that the Interested Party was arrested on 3rd September 2016, detained at JKIA on his arrival from Dar salaam, Tanzania via KQ and on 4th September 2016 he was deported back to Dar esalaam despite the court order prohibiting such action.

31. Although the application herein was brought under Section 5 of the Judicative Act, and all other enabling provisions of the law, I am satisfied that even without citing the provisions under which the application was brought, the breach complained of is in respect of the prohibition which is a conservatory order in the nature of an injunction and therefore Section 63 of the Civil Procedure Act and Order 40 of the Civil procedure Rules apply and no leave to apply would be required.

32. The order was received on 31st August 2016 by the Investigations and Prosecution Section of the Department of Immigration Services who, upon receipt thereof ought to have cascaded the order to the Principal Immigration officer in charge at JKIA on the night of 3rd September 2016 so that upon arrival of the Interested Party as per the invitation letter of 3rd September 2016 by the applicant, who also undertook to host the Interested Party and to meet all his expenses of stay, he would not be arrested, detained or deported.

33. However, from the available affidavit evidence, there is no evidence that the recipient of the order of 30th August 2016 disseminated that order to the immigration officers at JKIA or any other border or entry point.

34. There is also no evidence of constructive knowledge of that order by the Principal Immigration Officer in charge at JKIA on the night of 3rd September 2016 and or the officer in charge of station, JKIA Police Station.

35. I say so because the affidavit evidence does not disclose how service of the order was effected on the two officers at JKIA and or that they were aware of the said court order.

36. At paragraph 8 of the applicant's affidavit, it is deposed that upon arrival at JKIA on 3rd September 2016, the Interested Party was arrested by the Principal Immigration Officer in charge of JKIA in collusion with some 2 unnamed Police Officers from JKIA Police Station on the ground that the Interested Party was not permitted to enter the country, and that the Interested Party was detained

overnight at the respondent's holding facility within the airport.

37. The same affidavit at paragraph 9 further states that the said immigration officer who declined to name himself to the Interested Party contemptuously dismissed the court orders herein given to him by the Interested Party, stating “**Those are not orders.**”

38. However, what is striking about the affidavit referred to above is that it is not sworn by the Interested Party who is directly affected by the order and the alleged actions of the respondents in contravention of the order. The affidavit is sworn by one Maratab Bashir the director of the Exparte Applicant. The said deponent does not state how he came to know or learn about the actions of the respondents as meted against the Interested Party and in alleged flagrant disobedience of the court orders of 30th August 2016.

39. The said affidavit does not state that the deponent who is not the affected party was informed of those happenings at JKIA and by whom. Neither does the said deponent state that he was personally at JKIA when the respondents acted the way they did and or that he is the one or the Interested Party who showed the alleged contemnors the court orders and that the immigration officer retorted contemptuously that “***those are not orders.***”

40. In addition, it is not clear from the letter of invitation dated 3rd September 2016 whether that letter was received by the Director of Immigration Services and even so, the said letter does not indicate the expected date of arrival of the Interested Party and via what entry point, among the many Kenyan international border entry points.

41. The burden of proof of contempt of court order is with the party who alleges that the order was flagrantly disobeyed, even if there is no opposition from the alleged contemnor.

42. The standard of proof, on the other hand, in contempt proceedings, is higher than that of balance of probabilities, though not on beyond reasonable doubt. Orders for punishing an alleged contemnor are never issued at large. They must be directed at a particular person who is named in the order and who is alleged to have disobeyed the orders or aided or abetted in the disobedience of the court orders, thereafter, the orders would then affect any other person who aids or abets the disobedience of the court order.

43. In this case, the respondents are office holders thereof of the public offices. Office holders change from time to time. In order for this court to find that there was disobedience of the court orders and that such disobedience must be punished, the court must be given the names of the specific persons who are alleged to have disobeyed the court orders. The court cannot issue orders to some officer in charge whose names are not disclosed.

44. The charge of contempt of court is akin to a criminal offence against the administration of justice. A party may lose his liberty and therefore the court, before finding a person to be in contempt of court order, must be satisfied, almost but not exactly beyond reasonable doubt that the person is in contempt of court order. The court in contempt of court proceedings must also draw a balance between two fundamental principles, on the one hand, the power of the court to protect the authority and the supremacy of the law and on the other hand, its duty to protect and uphold the right of a citizen or person to a fair hearing and or a trial as espoused in Articles 50 and 51 of the Constitution.

45. Where it is readily apparent that the respondent's agents upon which the prohibition orders were served at the airport are not even named or disclosed, and neither is it known as to who showed to the said unnamed agents, the court order; and where as I have stated, there is no evidence from the letter of 3rd September 2016 as to when the Interested Party was expected to jet in and via what entry point, it cannot be said that respondents herein and or their agents were in flagrant breach of the court orders made on 30th August 2016.

46. It will be noted that on 31st August 2016 when the order was served upon the respondents was a Wednesday and the Interested Party is said to have arrived in the country on 3rd September 2016 which was a Sunday, three days later. Furthermore, whereas the contempt proceedings hereto are directed at the 1st respondent and his/her agent, being the Principal Immigration Officer in charge, of JKIA on the night of 3rd September 2016 and the officer in charge of station, JKIA Police Station, the court has not been told why the 2nd respondent Cabinet Secretary for interior and Co-ordination of National Government whose office was served with the impugned court orders on 31st August 2016 has not been cited with contempt of court since the record is clear that the orders were served upon the Cabinet Secretary's office and not the officer in charge of station at JKIA.

47. This court has held before in the case of **Sam Nyamweya & FKF Vs Kenya Premier League & Others HCC 69/2015** that the court cannot condone selective justice to be applied for it deprives persons equal protection of the law. In this case, there is no reason why the applicant has cited the Director of Immigration and his Principal Immigration Officer at the JKIA and left out the Cabinet Secretary for Interior and Co-ordination of National Government and instead cited an officer in charge of a Police Station at JKIA who is directly answerable to the Inspector General of Police and not to the Cabinet Secretary for Interior and Coordination of National Government; particularly when it is clear that the persons who were served with the orders of 30th August 2016 are the office of Director of Immigration Services and the Cabinet Secretary for Interior and Co-ordination of National Government; **and not** the officers who were to be found at the material time of the alleged contempt of court, in contempt of court.

48. For this court to find the officers at JKIA on 3rd September 2016 in contempt of court order and to punish them for contempt of court or to even to ask them to purge the contempt before being heard which latter prayer is a violation of their right to access justice as espoused in Article 48 of the Constitution and the right to fair hearing and fair trial espoused in Articles 50 and 51 of the Constitution, it must be satisfied that the two officers were either served with the orders allegedly disobeyed, or that they had actual or constructive knowledge of the said orders.

49. As was held in **Wangodu Vs Nairobi City Commission CA 95 of 1988**, the Court of Appeal was clear that a person cannot be denied an opportunity to be heard in contempt proceedings unless and until it was established that he had indeed committed contempt of court. The above decision was made before the 2010 Constitution which has made it clear that the right to a fair trial cannot be limited (see Article 25 of the Constitution).

50. On whether the court should decline to hear the respondents/ alleged contemnors, Lord Denning in the authority of **Hadkinson V Hadkinson (1952) AER 567** was clear that it is unusual for a court to refuse to hear a party to a suit and that such cause should be taken only when justified by grave considerations of public policy. The fact that a person had disobeyed an order of the court is not itself a bar to his being heard; a court could exercise its discretion to refuse to hear him if the disobedience continued to impede the cause of justice.

51. And in **Rose Detho V Ratilal Automobiles & 6 Others, Others NRB Court of Appeal CA 304/2006**, Githinji JA speaking for majority stated that:

“ The general rule that a party in contempt could not be heard or take part in the proceedings in the same case until he has purged his contempt applies to proceedings voluntarily instituted by himself in which he has made same claim and not a case where all he seeks is to be heard in respect of some matter of defence or where he has appealed against an order which he alleges to be illegal having been made without jurisdiction.”

52. Thus, the court does not enjoy any discretion on whether or not it should hear the alleged contemnor especially when the consequences are grave. It must hear such a person in order not to impede the cause of justice especially where deprivation of his liberty is concerned.

53. A court of law in the performance of its solemn duty of exercising jurisdiction to uphold the cause of justice and the rule of law and the self evident obligation to afford sundry and all, including those who annoy and vex judicial officers must accord all who seek to be heard a fair hearing before condemning them for being in contempt of court orders. In **Hell More V Smith (2) [1886] LR 35 C.D. 455** Bowen L.J stated that:

“ The object of the discipline enforced by the court in case of contempt of court is not to vindicate the dignity of the court or person of the judge, but to prevent undue interference with the administration of justice.”

54. And in **Johnson Vs Grant [1923] SC 789 at 790**, The Lord President Clyde in his dictum stated that:

“The law does not exist to protect the personal dignity of the judiciary nor the private rights of parties or litigants. It is not the dignity of the court which is offended. It is the fundamental supremacy of the law which is challenged.”

55. However, as was observed by the Court of Appeal in **Akber Abdullah Kassam Esmail V Equip Agencies Ltd & 4 Others [2014] e KLR**

“The power to punish for contempt is a drastic power that sometimes borders on the arbitrary. As the saying goes, just like fire, the contempt power can be a good servant, but a bad master. If it is not exercised cautiously and responsibly, it may undermine the very cause of justice and the rule of law that it is intended to safeguard. Arbitrary resort to the contempt power imperils the liberty and property of citizens as badly as deliberate disobedience of a court order.”

56. The Court of Appeal in the above **Akber Abdullah** (supra) case also cited with approval the decision in **Re Clements, Clements V Erlanger [1877] 46 L.J Ch D 383** where Lord Jessel M.R exemplified the misgivings about invocation of the contempt power as follows:-

“ It seems to me that this jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched, and exercised, if I may say so, with the greatest reluctance and the greatest anxiety on the part of judges to see whether there is no other mode which is not open to the objection of arbitrariness, and which can be brought to bear upon the subject.”

57. In **Nyamogo Vs Kenya Posts and Telecommunications Corporation**, No Nai 264/1993 the Court of Appeal expressed itself that the exercise of the contempt jurisdiction has traditionally been circumspect and subject to well defined safeguards to keep it to the straight and narrow. The court stated:

“ The consequences of a finding of disobedience being penal, the party who calls upon the court to make such a finding must show that he has himself complied strictly with the procedural requirements and his failure to so comply cannot be answered by merely saying that the other side was aware or ought to have been made aware of what the order required him to do.”

58. In the instant case, it is clear that there is no evidence that the unnamed Principal Immigration Officer in charge of JKIA on the night of 3rd September 2016 and the officer in charge of JKIA Police Station were the persons who were served with the court order. Secondly, it is clear that the 2nd respondent who was served with the court order is not made a party to these contempt proceedings.

59. Further, it is clear that only the 1st respondent who was served with the court order is made a party to the contempt proceedings. There is no explanation given why the 2nd respondent was carefully omitted from these proceedings, and why the Principal Immigration Officer at JKIA on the night of 3rd

September 2016 and the officer in charge of JKIA Police Station who are not parties to these proceedings and who were never served with the court order should be cited for contempt of court order and be made to purge the contempt before they are heard.

60. there is also no evidence that the two unnamed officers at JKIA were made aware of the court order, as there is no affidavit or deposition to that effect, by the person who may have made them aware of the order. This court finds the affidavit sworn by the applicant by the deponent, in support of this application so generalized that it does not disclose the source of information contained in the paragraphs concerning the manner in which the order of this court made on 30th August 2016 was disobeyed.

61. For this court to find the two JKIA officers contemptuous of court order, it must summon the respondents to come to court to explain whether upon receiving the order on 31st August 2016, they took the said order to JKIA and gave directions to the two JKIA officers to obey. In other words, the court must inquire into the process or channels through which an order received at the Head Office is transmitted to the various border entry points and how fast that is done.

62. In the absence of any evidence as to what international border entry point and date that the interested party would be arriving through from his destination, and from where, and in the absence of evidence that the officer's managing that specific border entry point was served with the court order or that they were aware of the prohibition, this court would be acting arbitrarily, if it proceeds to cite the 1st respondent and other alleged contemnors for contempt of court. The thread of evidence linking the two officers to the alleged brazen disobedience of court orders of 30th August 2016 is too thin. It does not meet the required standard.

63. Accordingly, I have come to the conclusion that this application must be declined on all the limbs. It is dismissed with no orders as to costs.

Dated, signed and delivered in open court at Nairobi this 11th day of October 2016.

R.E. ABURILI

JUDGE

In the presence of:

Mr Miyare for the ex parte applicant

N.A for the Respondents

CA: Adline