



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NUMBER 2892 OF 1993

JAMES H GITAU MWARA. DECREE-HOLDER/APPLICANT

VERSUS

ATTORNEY GENERAL. CONTEMNOR/RESPONDENT

MS MUTHONI KIMANI. CONTERMNOR/RESPONDENT

RULING

The application before the court is the Notice of Motion dated the 13th June, 2013 and brought by the Decree-Holder. It seeks the following orders: -

- 1. That the Contemnor/Respondent Ms Muthoni Kimani, be personally summoned to this court and be condemned for civil and/or Criminal contempt of court by being sent to prison for a period of 12months and fined Kshs. One (1) million or both.**
- 2. That the sum due and payable and now being withheld by the Contemnor be immediately released by the contemnor to the Decree Holders Advocates, G.N. Gichui Ngari & Company.**
- 3. The court summons to appear before court be served upon the said Contemnor by the OCPD, Central Police Station.**
- 4. That costs be provided for.**

The application was placed before Waweru, J on 14th June, 2013 and was fixed for mention inter partes on 20th June, 2013 and ordered served for that date.

On 20th June, 2013 the application was mentioned inter partes, as both the Applicant and the Respondent appeared through their various advocates. The counsel then fixed the application for a hearing inter partes on 23rd June, 2014 while the Respondent's advocate sought time to file replying or responding papers.

Meanwhile a court process-server, Duncan Kimani Mugo in his affidavit of service of 18th June, 2013, swore that he on 17th June, 2013, received the Notice of Motion now before the court with instructions from G. N. Ngari & company Advocates, to serve the same upon the Respondent. He at Sheria House Offices along Harambee Avenue Nairobi, served the Notice of Motion upon one Eric, a clerk at that office assigned and authorized to receive such service for and on behalf of the Respondent. It is noted that the said Eric accepted the service and signed on the copies that were returned to the court after stamping them on the first page.

I have examined the documents that were served upon Ms Muthoni Kimani's clerk on her behalf. They include the following: -

- a. **The application dated 13th June, 2013 (this application) which has a notice at its bottom to the effect that the court would hear and determine the application so served if the party served does not attend court on the fixed hearing date.**
- b. **A certificate of Registration No. CPS 000893 of the Process-Server, Duncan Kimani Mugo issued on 11th April, 2013.**
- c. **Certificate of urgency for the Notice of Motion signed by G N Gichuhi Ngari & Company Advocates dated 13th June, 2013.**
- d. **Supporting Affidavit to the application sworn by James H Gitau Mwara the decree Holder, sworn on 13th June, 2013.**
- e. **A copy of a letter by G N Ngari & Co. Advocates dated 21st May, 2013 to the Respondents and directed to the alleged contemnor Muthoni Kimani sent on 21st May 2013 to forward this court's Order issued on 7th May, 2013 and carrying a Penal Notice.**
- f. **The certified copy of a certified court order made on 3rd May, 2013 and issued by court on 7th May, 2013.**
- g. **Court ruling (certified copy) by Waweru, J dated 30th April, 2013 ordering that a decretal sum of Kshs. 4,749,122/80 then already released by the Ministry of Home Affairs to the Attorney Generals Chambers for release to the Decree-Holder be deposited in the Decree Holders Advocates client account within 14 days AND in default of such release, the Decree Holder had leave of court to institute civil or criminal contempt of court proceedings against the Senior Deputy Solicitor-General, Ms Muthoni Kimani against whom the orders were sought, made and directed.**
- h. **A certified extracted order made by this court by Waweru, J dated 7th December, 2012 and issued on 10th December, 2012 dismissing a notice of Motion dated 15th November, 2011 seeking to set aside the judgment that authored the decree hereby being executed.**
- i. **The ruling by this court dismissing the Notice of Motion dated 15th November, 2011 seeking the setting aside as in (h) above.**
- j. **A Replying affidavit dated 30th January, 2013 sworn by the alleged contemnor/Respondent herein, Muthoni Kimani on 30th January, 2013 in opposition to the Decree Holder's application dated 16th January, 2013 seeking leave to file contempt proceedings.**
- k. **A certificate of Order Against the Government for payment of a decretal sum of Ksh.4,749,122/83 issued the 13th October, 2011 in favour of the Decree Holder and carrying a penal Notice if the Order of payment of the sum therein specified is not obeyed and complied with by the Permanent Secretary who owed the debt to the Decree-Holder herein and more importantly by the said Muthoni Kimani, herein the alleged contemnor.**

l. An affidavit by James Hoseah Gitau Mwara, the Decree Holder herein describing how he obtained the Judgment and decree herein in his favour and explaining that his judgment and decree is valid and proper and describing the whole process of obtaining the same, from the beginning to the present and finally, explaining how it was the alleged contemnor's personal decision to refuse payment and withhold funds received from the Ministry of Home

Affairs on 21st October, 2012 and so the alleged contemnor's, decision to withhold the funds is alleged to be personal, malicious, conscious and open contempt of the courts orders of 21st October, 2011 and 7th December, 2012.

m. The Penal Code page 57 carrying Sections 144 to 119 and stressing Sections 117 concerning a conduct intended to defeat and obstruct justice.

Having placed on records the facts above, it is now important to lay the factual foundation of this contempt application proceedings before the court to the extent the court understands it from the facts on the record.

The Decree-Holder herein filed this suit on 15th June, 1993 against the Attorney-General on behalf of the Ministry of Home Affairs, claiming special, General and exemplary damages on account of his poor and negligent treatment while he was in detention at Kamiti Maximum Prison between the year 1990 and 1992. The suit was properly defended by the Attorney General's office. However, in a judgment dated 9th June, 2010, this court (Ali-Aroni, J) found the Government liable and awarded the Decree-Holder, James Hoseah Gitau Mwara, a judgment for Kshs.4,008,100/-- with costs and court interests.

By a Notice of Motion through Judicial Review dated 13th December, 2011, the Attorney –General sought to set aside the above cited judgment on the main ground that the Judgment creditor had probably obtained another judgment on the same facts between the same facts in High Court, **Misc. Civil Case No. 56 of 2005(OS)** and thus arguing that this suit before this court was an abuse of Judicial process. At the same period and by another Notice of Motion dated 15th November, 2011 the Attorney General sought to set aside the said judgment dated 9th June, 2010 and also sought to have struck-out this suit. The latter application was fully canvassed.

By a properly considered Ruling dated 7th December, 2012, this court (Waweru, J) ruled that: -

- i. This suit before the court was based on the tort of negligence while Nairobi High Court Miscellaneous Civil Suit No. 56 of 2005(OS) was based on violation of fundamental rights and freedoms and both suits were justifiable, proper and maintainable.**
- ii. That if either suit was challengeable then it would be Nairobi High Court Misc. Civil Suit No. 56 of 2005 because it was filed later and was never challenged on the ground now purported to be used by the Attorney-General to attack this suit.**

Apparently, the Attorney-General on being served with the above Ruling and after being notified that Ministries of the government being ordered by court to settle Civil debts were not obeying courts orders, was also informed that such defiance to obey those orders was attracting adverse comments from the Court's. The Attorney-General commendably in August, 2012, made a public pronouncement giving a direction to all Permanent Secretaries of the Government, to obey and/or comply with court Decrees and Certificates of orders against the Government ministries. In compliance, the Ministry of Home Affairs in respect to this suit before the court, released to the Attorney-General a sum of Ksh.4,749,122/80 including costs and interest in favour of the Decree-Holder herein.

It is on the record and on that basis that the Decree-Holder who became aware of the forwarded decretal sum in his favour, began to seek release of the said funds to him. He deponed that, his Advocates duly submitted to the Attorney-General the relevant Discharge Voucher and other documents required for the settlement of the decree, including Identity Card, KRA Certificate of compliance, Pin certificate and the Firms Registration Certificate and others. That he made many follow-ups, but in vain. He also wrote follow-up letters to the Attorney General, copies of which in a bundle, were annexed to this application as **JHGMI**, but without success. He further averred that it is now notorious that the Attorney General generally ignores most court orders. He posited this case as a good example.

Concluding finally that he had no clear way before him to recover the decretal sum, the Decree-Holder

avers that he then filed an application in this court file, dated 16th January, 2013 against Attorney General. He sought the following orders: -

- i. **That the decretal sum deposited with the Respondent by the Permanent Secretary Ministry of Home Affairs for onward payment and settlement of this decree in October, 2012 be released to the Decree-Holders Advocates Bank of Africa, Wabera Street Account No. 6636290023 within 7 days.**
- ii. **That in default the Decree-Holder be granted leave to institute Contempt of Court Proceedings against Senior Deputy Solicitor General Ms Muthoni Kimani for conscious and deliberate disregard, defiance and disobedience of said Court Order.**
- iii. **Costs.**

The application was properly backed by the facts explained therein and herein above. It was fully defended by Ms Muthoni Kimani who swore an affidavit in return, stating why she believed the Judgment and Decree being sought to be executed, was based on wrong principles which she explained was why she believed that she should not comply with the court order to release the decretal sum in her custody and control. The application as earlier mentioned also, was properly and fully canvassed by Ms Muthoni Kimani's advocate or legal assistant. The Ruling by this court (Waweru, J) dated 30th April, 2013 and delivered on 3rd day of May, 2013 found as follows: -

- a. **That the Decree-Holder had a valid money Judgment and Decree for Ksh.4,749,122/80 which stood unsettled.**
- b. **That the Ministry of Home Affairs had in compliance with the above decree had sent to the Attorney-General in October, 2012, the said sum, for the settlement of the claim with the Decree-holder herein.**
- c. **That the Decree-Holder and his advocates had done all that was possible to have the funds released to them by Ms Muthoni Kimani, her capacity as Deputy Solicitor General and an officer in authority and control, in settlement, but all was in vain as the said Ms Muthoni Kimani had refused/failed to release or order for the release of funds.**
- d. **That in defence of her position and conduct ms Muthoni Kimani had sworn in part that...
“... Among her duties is to review and approve settlement of decrees against the Attorney-General, issued by various courts to litigants...”**
- e. **That Ms Muthoni Kimani for the Attorney-General and the relevant Ministry of Home Affairs, had not sought, nor obtained stay of execution of this decree from this court or the Court of Appeal where she had purported to file a Notice of Appeal against the refusal to set aside this Judgment and decree.**
- f. **That Ms Muthoni Kimani as the Senior Deputy-Solicitor General had no power or jurisdiction or discretion, in absence of a properly obtained stay of execution, to decide whether or not to release the funds in the settlement of this decree.**

In the above circumstances, the court (Waweru J) accordingly, granted the main prayers and made orders (as this court understands them) as follows: -

“1. That the Decretal sum of Ksh.4,749,122/80 already released to and in the custody of the Hon. Attorney-General by the Permanent Secretary Ministry of Home Affairs in compliance with the Decree of this Honourable Court, be deposited in the Decree-Holders Advocate's Client's Bank Account whose details are Commercial Bank of Africa, Wabera Street branch, G N Gichuhi Ngari & Co. Clients Account No. 6636290023 within 14 days of service of this order upon the

Defendant.

2. That in default, leave be and is hereby granted to the Applicant to institute civil and criminal contempt of court proceedings against the Senior Deputy Solicitor-General Ms Muthoni Kimani for disregard, defiance and disobedience of the Court Orders and contempt of Court knowingly and deliberately.

3. That the Respondent be and is hereby condemned to pay costs of this application.”

The clear reading of that court's ruling and the Order just cited above shows that the court had become conversant with the fact that Ms Muthoni Kimani was totally unwilling to comply with the orders of court to release these specific funds. This is likely to have come up from the facts canvassed in the several applications that had been heard and determined before that court concerning this particular judgment and decree. That also probably explains why the court specifically directed the orders not at the Attorney General's Office generally but at Ms Muthoni Kimani, the Senior Deputy Solicitor-General, in particular. That further in my view, is why the court specified, the period of 14 days within which the order should be obeyed otherwise a more drastic step of filing contempt of court proceedings would be taken up as a final step. All the above averments by the Decree-Holder have not been denied or contradicted by Ms Muthoni Kimani in any way. The court accordingly accepted them as the correct facts.

The Decree-Holder deponed and indeed the Respondent(s) has not contradicted the facts, that he on 4th June, 2013 at 11 a.m. visited Ms Muthoni Kimani's office at the state Law Office to follow-up on the recovery of the said funds. It is said to have been the last day of the 14 days ordered by the Court to have the payment made. That when he reminded her of that fact, Ms Muthoni is deponed to have said the following: -

“Gitau Mwara, a High Court Order is not important to me...” and then she ordered him out of her office. That when the Decree Holder went to Finance/Accounts Department of the State Law Office to inquire more, he was informed that Ms Muthoni Kimani in her Senior capacity and authority and being in control of such settlements, had instructed them not to release those specific funds to the Decree Holder.

The Decree Holder, in support of this and earlier application also deponed, and the deponements were again not denied nor controverted, that Ms Muthoni Kimani in her official capacity as Senior Deputy Solicitor-General, had been served with all the relevant official documents for the purpose of releasing the said decretal sum to the Decree-Holder, but that she had rejected them and refused to release the funds. The Decree-Holder also claimed to have felt so helpless and embarrassed that he in addition, instituted a Disciplinary case at the Advocates Disciplinary Committee against M/s Muthoni Kimani as an Advocate of the High Court, accusing her of unprofessional conduct or professional misconduct over the issue in April 2013. However, nothing appears to have changed and this matter, remained unsettled.

It is the Decree-Holders case that when all else appeared to fail in the process to recover the funds, he through his advocate, finally filed this application on the 13th June, 2013, after he had served the Attorney General with the relevant Notice to institute the proceedings. That he instituted the proceedings after Ms Muthoni Kimani had totally refused to comply with the court order to release the decretal funds to him within the 14 days specified by this court in the Order of 3rd May, 2013.

The Decree Holder deponed and the same was not again in any way denied or controverted by Ms Muthoni Kimani, that he had on 21st May, 2013 personally served her with the Court Order of 3rd May, 2013 at 4.30 p.m. at her office. He also deponed that the High Court Order so served, had annexed to it a Penal Notice against any disobedience of the order to release the decretal sum within the prescribed 14 days.

It is the Decree Holders/Applicant's case as the court understands it, accordingly, that the Respondent Ms Muthoni Kimani's conduct, amounts in the minimum to Civil contempt of court for the disobedience and

defiance to obey the court order of 3rd May, 2013 of this court. He accordingly, seeks the following orders: -

- 1. That the Ms Muthoni Kimani, the alleged contemnor be personally summoned to this court and be condemned to civil and/or criminal jail for contempt of court.**
- 2. That Ms Muthoni Kimani in her capacity as the Senior Deputy Solicitor-General with the authority to direct release of the sum so received by her office of Ksh.4,749,122/80 for the settlement of this decree, do so authorize such release without any delay.**
- 3. That the OCPD, Central Police Station be directed by this court to serve the court personal Attendance Summons upon Ms Muthoni Kimani to attend this court and show cause why she should not be committed to civil and/or criminal jail for contempt of court.**
- 4. That costs be provided.**

I have carefully perused and considered all materials upon which this application is grounded. I have also perused and considered the replying affidavits filed by Ms Muthoni Kimani, the Senior Deputy Solicitor-General in her defence. Only the Decree Holder filed written submissions on record which I have also perused and considered. Ms Muthoni or her advocate did not file any written submissions despite being given chance to do so.

The hearing date of this application appears to have been taken by the Applicant at the Court Registry on 11th November, 2013. A hearing notice was served upon the Respondents on 6th December, 2013. A return of Service showing a duly served hearing Notice for 26th February, 2014, is on the record. However, neither the Respondents nor their advocates attended court to defend the proceedings. They did not even bother to explain why counsel did not attend court. On the said date the applicant adopted his written submissions which the court has considered. Apart from the content of her Replying Affidavit to this application, Ms Muthoni Kimani, chose not to attend court to defend the allegations against her.

The court accordingly finds the state of facts before it to be as follows: - Ms Muthoni Kimani the Senior Deputy Solicitor-General on behalf of the Attorney-General, received the sum of Ksh.4,749,122/80 for the specific purpose of settling the decree in favour of the applicant herein. Ms Muthoni Kimani is said to have given directions (and that assertion is not denied), that the funds be not released on the basis that the Decree Holder was not, in her belief, entitled to the decree sum because the Decree Holder had already been awarded adequately in a different case. Notwithstanding that the judgment and decree in favour of the Decree Holder had been obtained after the Attorney-General's Office had defended the case, Ms Muthoni Kimani filed two applications to set aside the judgment. The applications were dismissed, or not held in the Attorney-General's favour. She attempted to appeal but again without success.

The Decree Holder then, filed an application in this court in January, 2013 seeking the release of the decretal sum withheld by the Attorney-General's Chambers by Ms Muthoni Kimani's Orders. He at the same time, sought leave to file contempt of court proceedings if Ms Muthoni Kimani failed to obey the court orders to release the funds. This court on May 3rd, 2013 deliberately ordered Ms Muthoni Kimani to release the funds or face court contempt proceedings for which the court granted the leave sought to file them. However, despite every effort made by the Decree Holder and his Advocate, Ms Muthoni totally and without lawful cause and also with open contempt as narrated and perceived from her personal affidavit, refused to obey or comply with those court orders of May 3rd 2013 to-date.

If this court finds that Ms Muthoni Kimani in her conduct above analysed, actually committed a contempt of court by disobeying or deliberately or unreasonably refusing to comply with a lawful court order, the court will proceed to convict her for contempt of court and will award punishment to her in accordance with our law, taking into account the circumstances of the case. I will now accordingly have a brief analysis of the applicable law for contempt of court.

Kenya adopted the law for contempt of court from the English Law because it was colonized by the British who imported their law to its colonies. Such law may have evolved with time and I now revert to it, in its original and evolved state: -

Our Judicature Act Section 5, provides as follows: -

“Contempt of Court

1. ***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 such power shall extend to upholding the authority and dignity of subordinate courts.***
2. ***An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.”***

The above provision clearly directed us to the law governing the High Court of Justice in England which was the common law as supplemented by order 52 of the Supreme Court Rules of England. In 1981 England enacted the **Contempt of Court Act of 1981** which supplied the common law contempt of court offences. England also promulgated the **Civil Procedure (Amendment No. 2) Rules, 2012** which replaced Order 52 of the Supreme Court Rules.

The Kenya Court of Appeal interpreted and adopted the above Acts and Amendments into our law in Kenya in several cases. In **Justus Kariuki Mate & another Vs Hon. Martin Nyaga Wambora & another, Civil Appeal No. 24 of 2014** (herein to be referred as ‘**Wambora Case**’ the Court of Appeal stated of Section 5 of the **Judicature Act**, after quoting it and making a reference to the case of **Christine Wangari Gachege Vs Elizabeth Wanjiru Evans & 11 Others (Civil Application No. 233 of 2007)** as follows: -

“Consequently a careful consideration must be had to the provisions of Contempt of Court Act of 1981 and PART 81 of Civil Procedure (Amendment No. 2) Rules, 2012 (both of England) with regard to contempt proceedings in Kenya. The scope of the said PART 81 as provided under Rule 81.1 is limited to contempt of court, penal, contempt and disciplinary provisions of the county Courts Act 1984, and allows a person to be: -

- a. ***Guilty of contempt of court, or***
- b. ***Punishable by virtue of any enactment as if that person had been guilty of contempt of the High Court, to pay a fine or to give security for good behavior as it applies in relation to an order of committal.”***

The Court of Appeal then went ahead to state that the said **PART 81** which related to Applications and Proceedings in Relation to Contempt of Court, were of four different kinds as therein enumerated. This case, as I understand it, should come under the **Committal for breach of a judgment, order or undertaking to do or abstain from doing an act provided under Rules 81.5, 81/6, 81.7, 81.8 and 81.9**. According to Rule 81.9, the judgment or orders not complied or obeyed by the person before the court, must have been served upon the person, personally, together with the penal notice of what sanction would be administered upon the person if he did not comply with the court orders. That is to say that the court order and the penal notice should have been served together.

It is clear from Rule 81.6 aforesaid however, that although service should be personal, the court may, in its discretion, dispense with actual personal service under Rule 81.8 if the court is satisfied that the person had sufficient notice of the order because her or his advocate was present when the judgment or order was pronounced, or because there is sufficient and satisfactory evidence that the person was notified orally, by letter, by telephone or email or by any other way satisfactory to the court.

The Court of Appeal in **Christine Wangari Gachege case** aforecited, put the position concerning personal service, thus: -

“The dispensation of service under Rule 81.8 (1) is subject to whether the person can be said to have had notice of the terms of the judgment or order. The notice of the order is satisfied if the person or his agent can be said to either have been present when the judgment or order was given or made; or was notified of its terms by telephone, email or otherwise. In our view, ‘otherwise’ would mean any other action that can be proved to have facilitated the person having come into knowledge of the terms of the judgment and/or order. This would definitely include a situation where a person is represented in court by counsel. Once the applicant has proved notice, the respondent bears an evidential burden in relation to willfulness and mala fide disobedience.”

Later in **Wambora Case**, the pronouncements above were affirmed.

It can now also be said that the old stiff requirement that the person facing the contempt of court proceedings must be strictly proved to have been personally served with the order and penal notice is no longer the law both in Kenya and in England. We have moved on and in my opinion, for the better. What is logically important is for the court to satisfy itself ***“without any shadow of doubt”*** as the Court of Appeal put it in **Shimmers Plaza Limited Vs National Bank of Kenya Limited** Civil Appeal No. 33 of 2012, that the person before the court for contempt had full knowledge or notice of the existence of the order of the court alleged to have been breached. Lenaola, J put the position as follows in **Basil Criticos Vs Attorney-General and 8 Others** [2012] eKLR.

“... the law had changed and as it stands today knowledge supersedes personal service... where a party clearly acts and shows that he had knowledge of a court order; the strict requirement that personal service must be proved is rendered unnecessary.”

It is now trite law, therefore, that service of the judgment or order alleged to have been breached and the penal notice served upon the advocate representing the person being charged with the contempt of court is sufficient service unless it can be proved that the advocate did not notify his client. As the Court of Appeal put it in **Shimmers Plaza Ltd Case**.

“There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in court on instructions of a party, then it behoves him/her to report back to the client all that transpired in court that has a bearing on the client’s case. This is the position in other jurisdictions within and outside the commonwealth.”

The Supreme Court of Canada in the case of **Bhatnager Vs Canada (Minister of Employment and Immigration)** [1990] 2 S.C.R 217 at p. 226 put the principles as follows: -

“... a finding of knowledge on the part of the client may in some circumstances be inferred from the fact that the solicitor was informed. Indeed, in the ordinary case in which a party is involved in isolated pieces of litigation, the inference may readily be drawn On other cases there can be no doubt that the common law has always required personal service or actual personal knowledge of a court order as a precondition to liability in contempt. ... knowledge is in most cases (including criminal cases) proved circumstantially, and in contempt cases, inference of knowledge will always be available where facts capable of supporting the inference are proved.”

Reverting now to the facts of this case before me, Ms Muthoni Kimani did not at any time claim that she did not know of or was not personally or through her counsel served with the order of the 3rd May, 2013. On the other hand, the Applicant/Decree-Holder deponed (and the court believed him since Ms Muthoni Kimani did not deny it) that he properly served her personally, apart from serving Ms. Muthoni Kimani’s clerk, Eric, with the said order of 3rd May, 2013.

Furthermore, apart from the direct service above, ms Muthoni Kimani’s advocate attended court to take the Ruling of Court on 3rd May, 2013 when this court (Waweru, J) pronounced the orders directing her to release the decretal sum in her office’s custody and her personal control, to the Decree-holder within 14 days or contempt proceedings would be commenced against her.

I am accordingly, satisfied beyond any reasonable doubt that Ms Muthoni Kimani was in full knowledge of the order of 3rd May, 2013. I am further similarly satisfied that failure to obey and to comply with the orders was deliberate, willful and without lawful or reasonable excuse, taking into account the facts and circumstances surrounding this case.

Ms Muthoni Kimani has not advanced any reasons for defying the said orders since she also ignored the court directive requiring her to put in and serve written submissions. She may have had objections to the original judgment and she indeed advanced her reasons for her opinion, but, the court in its earlier Ruling, clearly rejected her position and her appeal to the Court of Appeal failed to take off. She could have sought a stay of execution but she did not do so, probably because she realized she had meager chances of obtaining a stay. As the Court of Appeal did in the case of **Shimmers Plaza Ltd** (supra), this court must hereby state, that Government Institutions, State Officers, Bank Officers, Parastatal Officers and all and sundry, are obligated by law to comply with every lawfully made court orders directed at them. Parties at whom court orders are directed cannot be allowed to trash the orders with impunity since such orders are not optional but are mandatory. The person at whom the court orders are directed does not have a choice as to whether to obey the orders or not. Here I must quote the 26th President of the United States of America, Theodore Roosevelt, who stated thus: -

“No man is above the law and no man is below it; nor do we ask any man’s permission to obey it. Obedience to the law is demanded as a right; not a favour.”

Where therefore the court comes to the conclusion that any person obligated to obey the law or orders made under the law, has deliberately and knowledgeably broken it, it shall not fold its hands in helplessness and watch such orders continue to be disobeyed with impunity, left, right and centre. If it did so, the conduct of court would amount to abdication of our sacrosanct duty bestowed on us by the Constitution. The Court of Appeal, in the earlier cited case of **Shimmers Plaza Ltd**, put it well:

“The dignity and authority of the court must be protected, and that is why those who flagrantly disobey them must be punished lest they lead us all to a state of anarchy.”

It is indeed where the Rule of Law prevails and there is peace, order and tranquility that all people and institutions can freely exercise and enjoy their constitutional rights and their privileges, including personal or private and public offices.

In these circumstances, I find no alternative but to find Ms Muthoni

Kimani guilty of contempt of court in disobeying and/or defying the said court order of 3rd May, 2013. I accordingly convict her of the offence. I will pronounce the sentence as by law provided after I have heard and recorded her mitigation. Orders accordingly.

Dated and delivered at Nairobi this 7th day of May, 2015.

.....

D A ONYANCHA

JUDGE