



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & ADMIRALTY DIVISION
MISC. CIVIL APPLICATION NO. 105 OF 2012

IN THE MATTER OF

An Application by the Applicant EQUITY BANK LIMITED for an order of Committal for contempt directed to MR BRYAN YONGO and for the attachment and sale of the property directed to NEPTUNE CREDIT MANAGEMENT LIMITED.

AND IN THE MATTER OF:

An order made on 3rd February 2012 and issued in the presence of Mr. Bryan Yongo pursuant to the Applicant's Application made in court on 3rd February, 2012

RULING

Contempt of court

[1] An application for committal for contempt court has been made through the Notice of Motion dated 16th February, 2012. But, a Preliminary Objection has also been taken out by the contemnor against the said application. These are the two assignments I should deal with here. The Motions is seeking the orders;

- a. ***That Mr. Bryan Yongo, the Managing Director of Neptune Credit Management Limited to be committed to prison for contempt of court.***
- b. ***That the property of Neptune Credit Management Limited to be attached and sold for contempt of court.***
- c. ***That all necessary and consequential directions be given.***
- d. ***That the costs of this application to be costs in the cause.***

The application is supported by the affidavit sworn by the Mary Wangari Wamae, the Applicant's Company Secretary on 14th February, 2012.

[2] The Preliminary Objection carried several issues which I will set out in seriatim when I will be considering the objection. I propose to deal with the Preliminary Objection first. But a brief background is necessary in order for the court to accomplish the assignment herein.

Brief background

[3] The Applicant's claim that on 24th January, 2012 Hon. Muga Apondi J dismissed the Plaintiff's suit. That ruling was read and delivered by Hon. Musinga J (as he then was) on 3rd February, 2012. Upon

delivering the said ruling, counsel for the Applicant applied for leave to appeal the ruling and stay of proceedings to prevent a threatened advertisement for winding up proceedings. On the said application, Hon. Musinga J also made an order of status quo to be maintained for seven (7) days to enable the Plaintiff lodge a formal application. According to the Applicant, the Judge further directed that none of the parties were to take any adverse steps flowing from the said ruling for the seven days from the date of that order. However it was averred that on 6th February 2012, the Defendant's advocate commenced winding up proceedings against the Plaintiff by filing the Winding Up cause no. 2 of 2012. It is the Applicant's contention that the Respondents' action constituted breach of orders of Musinga J and was the basis of the contempt proceedings by the Applicant against the Neptune Credit Management Limited and its Managing Director, Bryan Yongo.

[4] On 21st March 2012, the Respondents, Mr. Bryan Yongo and Neptune Credit Management Limited, gave notice of Preliminary Objection to the Applicant's application dated 16th February, 2012. Mr. Bryan Yongo also responded to the application through his Replying Affidavit sworn on 3rd July, 2014. In the Replying Affidavit, he dismissed the averments by the Applicant as hearsay and denied he is in contravention of any court orders as asserted by the Applicant. Both the Preliminary Objection and application were argued by way of written submissions dated 16th May, 2014, 15th July, 2014 and 3rd July, 2014 by the Applicant and Respondents respectively.

The Preliminary Objection

[5] The Respondent raised by way of Preliminary Objection the following issues;

- a) The application contravenes the mandatory provisions of the Rules of the Supreme Court (R.S.C) Order 52 Rule 52 (2) as read together with Section 5 of the Judicature Act Cap 8;***
- b) That upon the dismissal of the application and suit, the court was functus officio and had no jurisdiction to make orders allegedly to have been violated;***
- c) That the terms of the status quo order was not clear and therefore ambiguous;***
- d) that these proceedings should have been brought under the title and reference of HCCC no. 871 of 2009 pursuant to Part 1 Paragraph 2.2 (3) of Practice Direction RSC 52 and CCR 29 English Procedure Rules; and***
- e) That a statutory body or corporation cannot be committed for contempt of court and cannot therefore commit its directors whatsoever.***

[6] A proper practice is that a preliminary objection is determined *in limine* because of its preliminary significance. However, and invariably, the court should first be satisfied the objections raised by the contemnor are a true Preliminary Objection in the sense of the law. The Applicant submitted that the Preliminary Objection was incompetent because it did not meet the test of a Preliminary Objection (hereafter the PO) set out in the celebrated case of **MUKISA BISCUITS MANUFACTURING COMPANY LTD V WEST END DISTRIBUTORS (1969) EA 696**. They argued that the so called PO raises no point of law, dwells on matters of fact and evidence. The contemnor, on the other hand, says the objections are true PO.

[7] I have considered all the rival submissions on the tenor of the PO and I take the following view of the matter. Any true Preliminary Objection should not be entangled with factual issues. On this I am content to cite a work in the case of **ENGINEER E.M KITHIMBA v AG & ANOTHER [2014] eKLR** on Preliminary Objection, that:

A preliminary objection was clearly delineated in the case of MUKISA BISCUITS MANUFACTURING CO. LTD v WEST END DISTRIBUTOR LTD [1969] E.A 696 where Law JA stated the following:-

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.”

And J.B Ojwang J (as he then was) made it clearer in the case of Oraro Vs Mbajja where he stated:-

“I think the principle is abundantly clear. A “preliminary objection” correctly understood is now well identified as, and declared to be the point which must not be blurred with factual details liable to be contested and in any event, to be through the processes of evidence. Any assertion which claims to be preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle a true preliminary objection which the court should allow to proceed. I am in agreement ... that ‘where a court needs to investigate facts, a matter cannot be raised as a preliminary point.’”

[8] Applying this test, are the Respondent’s objections a true Preliminary Objection? The only question that might be a true PO is whether the court is *functus officio*; it is fairly straight forward and is a matter of looking at the record only. All the other issues require probing of evidence in order for the court to determine them. For instance, some of the matters raised are on interpretation of orders made herein; the reconciliation thereto must be with the factual situation in the case. The other issues on; whether the Applicant complied with the Judicature Act in bringing the instant application; whether there was ambiguity of the order given of 3rd February, 2012; and whether the proceedings should have been brought in the existing suit, will invariably invite the court to look into matters of fact and evidence. All these are disputed facts, and deny the objection the character of a true Preliminary Objection. The Preliminary Objection is muddled-up with other issues which will require evidence to proof and on that basis I find that the objections raised herein are not a true Preliminary Objection in the sense of the law. The issues raised will be determined within the entire application as the court analyzes the circumstances of the case. Except, however, I will determine whether the court is *functus officio* from the outset.

Claim court is *Functus Officio*

[9] Did the court become *functus officio* when Musinga J made the orders for status Quo? The following matters are not disputed. By a ruling by Muga Apondi J and delivered by Musinga J (as he then was) on 3rd February, 2012, the Plaintiff’s suit was dismissed. Counsel for the Plaintiff immediately applied for and the court made an order for the maintenance of status quo pending the filing of a formal application in the following manner:

“.....I order that the status quo between the parties as pertains to this matter be maintained for the next seven days. That means that none of the parties shall take any adverse steps flowing from the ruling herein for the next seven days, within which time the Plaintiff shall file a formal application. I do not deem it necessary to make any order regarding provision of security at this juncture.”

[10] I am in agreement with the submission by the Applicant that the Court has jurisdiction and powers in appropriate circumstances to issue orders aimed at ensuring there is a level playing field between the parties. Even though the Plaintiff’s suit was dismissed in the ruling delivered on 3rd February, 2012, the law allows a party dissatisfied with the decision of the court to apply orally for stay of the judgment for a limited period as the party files a formal application. The proceedings which followed immediately upon delivery of ruling on 3rd February, 2012, were upon two oral applications by Counsel for the Plaintiff. One of the applications was for leave to appeal the ruling of Munga Apondi J; and the other was for stay of further proceedings arising from the dismissal order. Counsel for the defendant vehemently opposed the two applications, thereby prompting the Court to make a ruling on the matter. I have reproduced the relevant part of the short ruling above. In many jurisdictions including Kenya, the aggrieved party is entitled to make an oral application immediately upon delivery of a judgment or ruling for stay of execution or proceedings as the party prepares to file a formal application. The court, on such oral application has residual jurisdiction which is used in the best interest of justice. But, the relief is normally

of interim nature and is ordinarily limited to a reasonable and short period of time; not more than fourteen (14) days albeit it could be longer depending on the circumstances of the case. That jurisdiction draws from the Constitution as recognition of the right of appeal of a party who has signified he wants to utilize his right of appeal, and it acts to prevent any appeal filed from becoming a barren venture from the start. That jurisdiction is replicated when a party files a formal application for stay of execution or proceedings, and it takes a special character; the party may apply before the court which passed the judgment or in the appellate court; and where the court which passed the judgment refuses the stay at first instance, the party may apply to the appellate court and such application is not an appeal from the refusal of stay by the court of first instance in fact, there is no necessity of appeal at all on such refusal by the first instance court. Such special jurisdiction, and I had stated this earlier, is aimed at ensuring the appeal filed is not rendered a barren result. This practice is also common in constitutional practice and adjudication, under the Civil Procedure and Practice; see Order 22 and 42 of the Civil Procedure Rules. Consider also the following rendition of court in the case of **TARBO TRANSPORTERS v ABSALOM DOVA LUMBASI [2013] eKLR**

[27] This very procedure has been adopted in the Court of Appeal Rules. It is a common and legal procedure in many jurisdictions, and is one of the legal instances where exception is made to the rule of res judicata. The procedure is so designed in order to offer an intermediate measure that is necessary to preserve the subject matter of the appeal, and also protect the rights of the parties in the appeal. I have said elsewhere in this case and in others that the appellant's right of appeal includes the prospects that the appeal is not rendered nugatory. See the opinion of the court in the case of BGM HC MISC APPL NO 42 OF 2001 JAMES WANGALWA & ANOTHER V AGNES NALIAKA CHESETO that;

The right of appeal is a constitutional right that actualizes the right to access to justice, protection and benefit of the law, whose essential substance, encapsulates that the appeal should not be rendered nugatory, for anything that renders the appeal nugatory impinges on the very right of appeal.

[28] By law, it is the obligation of the court to preserve the subject of the suit which is inherent in the administration of justice. If the appellant is successful in the appeal, there will be a barren result unless the subject of the appeal is preserved in whatever way the court may deem fit. See the case of ERINFORD PROPERTIES V CHESHIRE [1974] 2 All ER 448. The case of SHIVABHAI NATHABHAI PATEL V MANIBHAI NATHIBHAI PATEL [1959] EA 907 offers an extremely marked grip on this issue when it rendered itself that;

...it is not only right that the court should attempt to preserve property which may be in issue, but it is the clear duty of the court to do so.

[29] If it be the way proposed by Mr. Omondi, that very purpose of preserving the subject of the appeal will be defeated thereby causing extreme injustice. I take judicial notice that courts of law and the entire system of administration of justice are not designed to preside over a procedure that will result into injustice. They are courts of justice. The discretionary decision of the court appealed from under Order 42 Rule 6 has not been assigned under that Order, the finality in the sense of the rule on res judicata. That is why, and I believe it to be so, Order 42 Rule 6 of CPR has been tailored the way it is. I consider it a misconception to think that whenever there has been a judicial pronouncement on a matter, the only channel open to the aggrieved party is an appeal or application for the setting aside of the order or review. The law may provide for other methods of relief depending on the objective the law wants to achieve. See the case of WILLIE V MUCHUKI & 2 OTHERS [2004] 2 KLR 357 on the court's observation that the doctrine of res judicata does not apply in succession cases which supports the argument that this doctrine does not operate without borders in an erga omnes connotation to all corpus of law. Order 42 Rule 6 of the CPR provides for the manner of moving the court for stay pending appeal which is perfectly legal. I therefore find that the application before me is not res judicata, and the argument by Mr. Omondi thus fails.

[11] Therefore, after dismissing the suit, the court was not *functus officio* to issue orders of status quo or stay of any proceeding for seven days as it did. I am not sitting on appeal here, but I should state that the practice employed by the learned judge, Musinga J (as he then was) is perfectly within the court's jurisdiction. In the circumstances, I find that the court had the power to make appropriate orders under the circumstances. Equally, the application was not barred by *res judicata* under the provisions of S. 7 of the Civil Procedure Act, or was the court *functus officio* as contended by the Respondents. I dismiss the preliminary objection dated 21st March, 2012 to that extent.

Back on the main course

[12] I shall now embark on determining the merit or otherwise of the application dated 16th February, 2012. The issue for determination in this application is primarily whether the Respondents willfully disobeyed the orders of the court made on 3rd February, 2012. And if so, what is the appropriate sanction?

What the Applicant is saying

[13] According to the Applicant, the Respondent's director Mr. Bryan Yongo was present in court when a ruling was made to the effect that status quo would be maintained between the parties by Musinga J. But, in complete disregard of the said order, the Respondent proceeded to institute Winding-Up Cause No. 2 of 2012 on 6th February, 2012 against Equity Bank Limited; an affront to the Court's authority. Accordingly, the Applicant asserted that the Respondents ought to be punished for the contemptuous actions. The Applicant cited the cases of **HADKINSON v HADKINSON (1952) 2 ALL ER, MWANI v MWANI (1997) KLR 159 AND TRUST BANK LIMITED v SHANZU VILLAS LIMITED & 3 OTHERS** in support of its submission to show that the acts of the Respondents defied the authority of the court and must therefore be punished. The Applicant also argued that the Respondents were fully aware of the orders of the court and cannot hide behind the notion that orders of the Court ought to have been extracted and served upon them personally. On the basis of those submissions, the Applicant urged the Court to allow the application for contempt of court.

The Respondents in defence

[14] The Respondents on their part have challenged the application first on the basis that it has been wrongly brought. According to learned Counsel for the Respondents, the Plaintiff did not fulfill the conditions precedent before or on filing the motion. Here, it was argued that leave of the court was not obtained before commencing the contempt proceedings; that there was no notice to the Registrar and the Attorney General within the prescribed timelines. And so, failure to adhere to these procedures rendered the application for contempt incompetent and should just be dismissed. The Respondents stated further that the Order allegedly disobeyed was not extracted or personally served on Mr. Bryan Yongo. They argued the omission rendered the application fatally defective. More was submitted by the Respondent: that contempt of court proceeding cannot be taken out against a company such as Neptune Credit Management Limited. The Respondents therefore urged the court to dismiss the application with costs.

THE DETERMINATION

[15] First things first. The power of the court to entertain an application for contempt of court is not in doubt. It draws from Section 5 of the Judicature Act which provides:-

“5.(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 that power shall extend to upholding the authority and dignity of subordinate courts.”

[16] But within the applicable law and procedure, is this application properly before the Court? Our statutory law on contempt of court still refers to the procedure by the High Court of Justice in England- a kind of endocrine-disorder which has been decried by our courts. See a classic exposition of the said state of affairs in a work by Odunga J in the Case of **JOHN MUGO GACHUKI V NEW NYAMAKIMA**

CO. LTD[2012]eKLR, where he made the following observations with regard to the procedure of contempt proceedings in Kenya ;-

“It is unfortunate and regrettable that nearly 50 years after independence our procedure, with respect to punishment for contempt in our Court is referable to the procedure in the High Court of Justice in England. It is saddening that the entities entrusted with updating and drafting our laws have not seen the urgency of enacting our own law relating to such an important aspect of the Rule of Law. That being the position, ours is not to enact the law but to interpret the law as enacted.

Therefore the law that governs contempt of court proceedings is the English law applicable in England at the time the contempt was committed. The procedure in the High Court of Justice in England, is that the court comprises three (3) divisions – the Chancery, the Queens Bench and the Family Division. The jurisdiction of the High Court of Justice in England in matters of contempt of court is provided for in the Rules of the Supreme Court. Order 52 rule 2 of these Rules provides an elaborate procedure for the institution and prosecution of contempt of court applications. Under rule 2 subrule (3) of the Order 52 of the said Rules, it is stated, in mandatory language, that the notice of the application for leave is to be given to the Crown Office not later than the preceding day and the applicant must at the same time lodge in that office copies of the statement and affidavit. It is settled that the equivalent of the Crown Office in Kenya is the Office of the Attorney General. Order 52 rule 2(1) of the Rules of the Supreme Court of England provides that no application to a Divisional Court for an order of committal against any person may be made unless permission to make such an application has been granted in accordance with the rule. Subrule (2) provides that an application for such permission must be made ex parte to a Divisional Court except in vacation when it may be made to Judge in Chambers and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought and by an affidavit to be filed before the application is made verifying the facts relied on.”

[17] But, the position has changed now especially following the Court of Appeal decision in the case of Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others [2014] eKLR, where the Court of Appeal stated as follows ;-

“Following the implementation of the famous Lord Woolf’s “Access to Justice Report, 1996”, The Rules of the Supreme Court of England are gradually being replaced with the Civil Procedure Rule, 1999. Recently, on 1st October, 2012 the Civil Procedure (Amendment No. 2) Rules, 2012 came into force and

PART 81 thereof effectively replaced Order 52 RSC in its entirety. PART 81 (Applications and Proceedings in Relation to Contempt of Court) provides different procedures for four different forms of violations.

Rules 81.4 relates to committal for “breach of a judgment, order or undertaking to do or abstain from doing an act.”

Rule 81.11- Committal for “interference with the due administration of justice” (applicable only in criminal proceedings).

Rule 81.16 – Committal for contempt “in the face of the court”, and

Rule 81.17 - Committal for “making false statement of truth or disclosure statement.”

An application under Rule 81.4 (breach of judgment, order or undertaking) now referred to as “application notice” (as opposed to a notice of motion) is the relevant one for the application before us. It is made in the proceedings in which the judgment or order was made or the undertaking given. The application notice must set out fully the grounds on which the committal application is made and must identify separately and numerically, each alleged act of contempt and be supported by affidavit(s)

containing all the evidence relied upon.

The application notice and the affidavit or affidavits must be served personally on the respondent unless the court dispenses with service if it considers it just to do so, or the court authorizes an alternative method or place of service. It is clear from this summary that leave, now called “permission” is not required where committal proceedings relate to a breach of a judgment, order or undertaking. That position must be contrasted with the requirement in Rules 81.12 – committal “for interference with the due administration of justice” and 81.17 – Committal “for making a false statement of Truth or disclosure statement” where, in the former it is expressly provided that:-

“The application for permission to make a committal application must be made by a part 8 claim form.....”

And in the case of the latter,

“A committal application in relation to a false statement of truth or disclosure statement in connection with proceedings in the High Court, a Divisional Court or the Court of Appeal, may be made only;

a) with the permission of the Court dealing with the proceedings in which the false statement or disclosure statement was made.....”

We find on the basis of the new Civil Procedure Rules (of England) which are now contained in the Second Supplement to the 2012 White Book that no leave is required before bringing an application, like the one before us, for committal for contempt relating to breach of this court’s order. The application is for that reason, incompetent and is struck out with costs.” (Emphasis mine)

[18] The above reasoning of the Court of Appeal attests the fact that the procedure with regard to the institution of contempt proceedings has since evolved. No leave is required from the court before commencing an application of contempt and committal for contempt based on breach of a court order. The instant application for contempt of court on allegations that the contemnor breached a court order is, therefore, properly before this court. However, it is imperative for the Applicant to show that the application notice and the affidavit or affidavits were served personally on the respondent unless the court dispenses with service if it considers it just to do so, or the court authorizes an alternative method or place of service. Where a party alleges that a notice was not served, it is the onus of the Applicant to prove service was done; the legal way is by filing an affidavit of service. I have looked at the affidavit of service dated 5th March, 2012 and filed on the same day by Patrick Anam, an advocate of the High Court. Paragraph 3 of the same, clearly states that Mr. Bryan Yongo was personally served with the Chamber Summons Application under certificate dated 14th February, 2012, Originating Notice of Motion dated 16th February 2012 and hearing Notice dated 28th February 2012, in which he acknowledged receipt but declined to sign on the copy of Mr. Anam. Mr. Yongo did not seriously challenge this assertion in my view, but simply denied knowing of the existence of the court order. I have also seen the Affidavit of Shadrack M. katee dated 15th February, 2012, where the Notice, Statement and Affidavit all dated 14th February, 2012 were served on the Attorney General. In view of the foregoing, I find that the application does not offend Section 5 of the Judicature Act 8 and Rules of the Supreme Court of England. The application for contempt is properly before the court.

Substantive matters

[19] The preliminary hurdles have been surmounted. I have considered the Affidavits on record, the submissions of counsel and authorities relied on. Let me state what the standard of proof is in contempt proceedings.

Standard of proof

[20] In the case of **OCHINO & OTHERS –VS- OKOMBO & OTHERS (1989) KLR 165**, the Court

of Appeal stated at page 167:-

“The power to deal with contempt of court is provided for under Section 5 of the Judicature Act (Cap 8) and Order 39 Rules 2(3) of the Civil Procedure Rules.the standard of proof in contempt proceedings must be higher than proof on a balance of probabilities, almost but not exactly beyond reasonable doubt.”

Personal service versus knowledge

[21] Of fundamental importance in an application for contempt, the Applicant must prove the order in question was served personally on or the contemnor had knowledge of it, and that despite such service or knowledge, the party sought to be committed has disobeyed the order. This approach finds support in the case of **BASIL CRITICOS v A-G & 8 OTHERS [2012] eKLR** where the court stated that:

“...the law has 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”.

[22] Were the Respondents served with or did they have knowledge of the order of the Court made on 3rd February, 2012? As I stated elsewhere in this decision, Musinga J ordered that the status quo between the parties as pertains to the instant matter be maintained for the next seven days and no adverse steps were to be taken against the Applicant within that period. The learned judge also directed that the Applicant should file a formal application for stay of proceedings pending appeal within the time allowed. It is not in dispute that the said order was not extracted or served personally on Respondents. But, looking at the arguments by the Applicant, and I have stated this, personal service of the particular order in question may not be necessary if it is proved that the Respondents had knowledge of the order in question. Therefore, extraction and personal service of the concerned order is not an issue. The Respondent averred that Mr. Brian Yongo was present during the delivery of the ruling and the making of the order of status quo. In any event, the Respondents were fully aware of the orders as they were represented in court by their advocate when the order by Musinga J was made. See the case of **Nairobi Civil Case Number 403 of 1995 Pius Joseph Masika –vs- Samuel Njiru & 3 Others (UR)**. This position is further fortified by the contents of the letter dated 6th February, 2012 by Ong’anda & Associates Advocates to Messers Sichangi & Co. Advocates attached to the Affidavit of Mary Wangari Wamae dated 14th February, 2012 and marked as Exhibit MWW3. In the said letter by the Advocate of the Respondents clearly demonstrate that they were aware of the order of Musinga J except they considered the said order to have been ***made invacuo and nothing stops our client [read Respondents] from exercising its constitutional rights inferred by Statute from filing a winding-up petition...*** See the following content of the said letter;-

“Do refer to the ruling delivered by hon. Justice Musinga on the 3rd of February, 2012 wherein the said suit and the application were dismissed with costs to our client.

Consequently, the purported “status quo” orders made by Hon. Justice Musings were made invacuo and nothing stops our client from exercising its constitutional rights inferred by Statute from filing a winding-up petition against the client pursuant to the Notice issued to your Client in terms of Section 220 of the Companies Act.”

[23] Surely, the Respondent filed a winding-up cause in violation of the order by Musinga J which prohibited the taking of such adverse step in relation to the suit. The action taken by the Respondents was in disobedience of the court order issued by Musinga J on 3rd February, 2012 even if they did not agree with the issuance of the order or they believed it ought not to have been issued or was issued wrongly. See the case of **ECONOET WIRELESS v MINISTER FOR INFORMATION AND COMMUNICATION & ANOTHER [2005] eKLR**. The correct procedure was to apply for the order to be set aside but not to disobey it because they believed or received legal counsel that it was issued ***invacuo and nothing stops the Respondent from exercising its constitutional rights inferred by Statute to file a winding-up petition.*** To that extent, I find that the Respondents had knowledge of the order and the issue of personal service upon them does not arise. By dint of the aforementioned letter, it was

admitted that the Respondents filed a winding up petition against the Applicant within the seven day period in which Musinga J had ordered that status quo was to be maintained (that is on 6th February, 2012). To my mind all these constitutes deliberate and intentional disobedience of a Court Order. Such conduct defies the authority or dignity of a court and amounts to interference with the administration of justice. Such conduct should be punished in order to protect the dignity of the court which has been offended as opposed to that of the individual judge. See *Black's Laws Dictionary*.

[24] Having found there was willful disobedience of the court order by the Respondents, a question has arisen; whether Neptune Credit Management Limited can be found guilty of contempt. I am of the firm opinion that where the appropriate officer of the company has been served with the order or has the knowledge of the order, a corporation will be liable for contempt. In such a case, both the company and the Director of the company who was served or had knowledge of the order would be liable. Except a legal person found guilty of contempt, may not be punished to imprisonment but to a fine or to such other appropriate penalty. See the case of **PAYLESS CAR HIRE AND TOURS LIMITED V IMPERIAL BANK LTD [2012] eKLR**. Accordingly, I find that the appropriate officer, Mr. Bryan Yongo, being the Managing Director of the Company had personal knowledge of the orders issued by the court on 3rd February, 2012 and is found to be in contempt of the said court order. Equally, Neptune Credit Management Limited filed the winding-up cause in the belief the order did not prevent it from doing so when it clearly prohibited the action taken. It was, therefore, fully aware of the order of status quo but chose to disobey it. The company too is hereby found to be in contempt of court order. Before I close, failure to bring these proceedings in title and reference number to HCCC No. 871 of 2009 pursuant to direction RSC 52 and CCR 29 English Civil Procedure Rules is not fatal in light of the provisions of Article 159(2) (d) of the Constitution.

Punishment

[25] Any person found to be in contempt of court may be punished in the court's discretion and in other ways apart from Committal to jail. See the case of **COMPANIA SUD AMERICANA DE VAPORES SA v HIN-PRO INTERNATIONAL LOGISTICS LIMITED (2013) EWHC (COMM)**. See also the *Black's Law Dictionary* that contempt is usually punished by a fine or imprisonment. Accordingly, each of the Respondents will pay a fine of Kshs. 500,000 within seven (7) days of today. In default of the fine; 1) the company's property will be attached and sold to recover the fine; and 2) Mr. Bryan Yongo will serve a jail term of 30 days.

Dated, signed and delivered in court at Nairobi this 5th day of November, 2014

F. GIKONYO

JUDGE