REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC.CIVIL APPLICATION NO. 276 OF 2014

MACHARIA WAIGURU

JOHN WAINAINA MWATI ……..... APPLICANTS

VERSUS

JOHN NJENGA

PAUL KANGETHE

JOHN MAINA MWANGI

WILSON KAMUNYA & B.O.G. KIAGUTHU BOY SCHOOL

L.M. KINUTHIA

CHEGE KIBATHI

J. MOTARI MATUNDA

EQUITY BANK …….....……... RESPONDENTS

R U L I N G

By an application of notice of motion dated 20th March 2014 and filed in court on the same day, the applicants herein Macharia Waiguru and John Wainaina Mwati have sought from this court orders that:-

a) The respondents be committed to jail for a period not exceeding six months.

b) The respondents be ordered to pay interest on the original decretal amounts at commercial rates.

c) Costs of the applications and application HC No.181/2014 be paid by the respondents as ordered in the said application plus costs amount incurred in pursuing the

relevant decretal amounts.

The application is grounded on the applicants' joint affidavit sworn on 20th March 2014 and the grounds that:-

a) The judgment and decree of the subordinate court have never been challenged.

b) The sale of the school bus to the second applicant has never been challenged

c) Disobedience of the orders of the court herein have been encouraged by the respondents John Njenga, L.M Kinuthia, J. Motari and Moses Chege Kibathi by filing spurious applications and for hypocrisy. They all know the futility of the "orders" they rely on.

The genesis of this matter is that vide Muranga SPM's court civil suit No. 299 of 2010, the applicants who were the plaintiffs in that case sued the Attorney General and the Secretary, BOG Kiaguthu Boys School for compensation. They obtained judgment of a liquidated sum which judgment and decree was obtained exparte. Following an application by the Attorney General through Mr. Motari Matunda, litigation counsel, on behalf of the school and the Attorney General, the said judgment and decree were successfully set aside by the court. The said order of the court reads:

"In court on 5th day of September 2013 before B. Ochieng Chief Magistrate. The application dated 17th October 2011 coming up for hearing before me B. Ochieng, CM in the presence of Mr. Motari counsel for the defendants/applicants and in the absence of the plaintiffs/respondents herein, and upon hearing and delivery a ruling, it is hereby ordered:-

a. ***That the affidavit of service dated 11th January 2010 be and hereby expunged from the court records;***
b. ***That the exparte proceedings of 12th January 2011, exparte judgment dated 25th March 2011 and the consequent decree dated 1st September 2011 and all consequential proceedings and orders be and are hereby expunged,***
c. ***That this matter be heard de novo."***

The record further reveals that the applicants herein did file another civil suit vide Muranga SPMCC No. 316 of 2011 seeking declaratory orders to enforce the judgment in Muranga SPMCC 299/201,which judgment had been set aside and expunged from the court record on 5th September 2013 as per the above extract of the order setting aside the same.

The applicants obtained a declaratory judgment in Muranga SPMCC 316/2011 which judgment was interlocutory on 18th July 2012 and they proceeded to extract decree dated 24th January 2013 together with certificate of costs for Sh.639,000 with interest of sh.44,730/- and costs of Sh. 475 against the respondents/defendants in that suit and moved to execute that said decree.

The attorney General once again through Mr. Motari Matunda litigation counsel successfully obtained orders of the court setting aside the said decree on 13th May 2013 wherein the court ordered as follows:-

a. …
b. That the judgment of 18/7/2012 is only interlocutory and not final and therefore the matter should be fixed for formal proof hearing as ordered by court the same date(sic).
c. That no attempts to execution should be made.

Regrettably, no proceedings in CC 299/2010 or cc 316/2011 are available in this file for the court to appreciate the original orders or rulings as granted. However, the 1st applicant whom I later learnt in the course of these proceedings that he is an advocate of the High Court of Kenya stated that the cases in

question were heard and fully determined on merit but when I asked him where the proceedings were, he stated that he had not availed them to this court.

After the Muranga SPM CC 316/2011, the applicants herein filed Muranga High Court Civil Suit No. 49 of 2013 against the Secretary BOG Kiaguthu Boys school, a Mr. Maina, a Mr. Karanja and Equity Bank Ltd and there appears to have been a judgment obtained against the named defendants which again the defendants moved the court and vacated the same.

In the meantime, the applicants had moved the court in CMCC 316/2011 and proceeded with execution of judgment that the court had found to be only interlocutory by the order of 13/5/2013 and obtained a decree nisi against Equity Bank to Garnishee (attach) all monies held by the bank in favor of the 2nd respondent school. The Garnishee order was issued on 28th February 2013 for Shs. 989,000/- with Shs. 67,500/- as costs all totaling sh 1,056,500/- due to the decree holders plaintiffs. As to when the judgment and decree giving rise to the garnishee order were delivered and or issued is not clear from the record but as I have indicated, the applicants abandoned this process midway and filed Muranga HCC 49/2013 wherein they sought judgment to execute decree in CC 316/2011. Vide a ruling dated 10th April 2014, Hon. Justice Ngaa Jairus struck out the applicants' suit in Muranga HCC 49/2013 on account of the principles of Res Judicata and Res subjudice. The learned Judge upheld a preliminary objection raised by the defendants therein citing pendance of similar suits in Muranga CMCC 299/2010 and CMCC 316 of 2011 as the applicants conceded that the said suits had been determined in their favor. The judge further observed that in the event that the said suit HCC 49/2013 was initiated on the presumption of existing judgments in the suits named CMCC 299/2010 and CMCC 316/2011, then the suit in the high court had no basis because such judgments or decrees did not even exist.

He further observed in his ruling that even if that were to be the case, then the dispute between the two parties was before a court of competent jurisdiction and therefore there was no reason why the plaintiffs should have filed a parallel suit in the High Court. It was further observed that the 2 suits named herein and in that case before Hon. Ngaa J, had no valid decrees as in CMCC 299/2010, judgment and decree had been set aside and in CMCC 316/2011, the suit was pending as the purported judgment was only interlocutory and the court had expressly directed that "no execution should proceed."

The applicants herein armed with decrees which were invalid then proceeded to file an application vide NRB HCC MISC Civil Appl No. 181 of 2014 seeking to obtain leave of court to commence (cite) contempt proceedings against the defendants in Muranga PMCC 299/2010 the original suit and Muranga PMCC 316/11 the declaratory suit for their alleged disobedience of court orders issued by the said court in the above two suits. The application was brought under the provisions of Section 5 of the Judicature Act.

It was alleged that they had successfully executed decree in PMCC 299/2010 and the bus No KAW 486Z Isuzu belonging to the respondent school was attached and advertised for sale and that the 2nd applicant who was also a plaintiff in the myriad of cases had bought the same at Ksh. 700,000/= but that the Secretary, BOG of the respondent school had refused to release the bus to the 2nd applicant, which prompted them to file declaratory suit in PMCC 316/2011 where they obtained judgment which allegedly confirmed the sale of the subject bus, allowing the applicants to retain Ksh. 139,000/= balance of the purchase price. They deposed that as they had already executed decree in CC 316/2011, any purported setting aside of the judgment in CC 299/2010 was null and void.

They accused Equity Bank respondent of freezing the school's bank account thereby making it impossible to access the money using the garnishee order they had obtained on 28th February 2013 as per the attached order, referring to a decree and judgment passed on 24/2/2013 in CC 316/2011 for Shs. 989,000 (not attached to the affidavit).

The applications for leave to cite the respondents for contempt of court was filed on 20th March 2014. The respondents who are advocates Mr. L.M. Kinuthia, Moses Kibathi, John Njenga and Motari Matunda were alleged to be responsible for failing to advise their clients to obey the law.

On 17th March 2014, the applicants were granted leave to cite the respondents herein for contempt vide HC Misc. Civil Application No. 181 of 2014 by Hon. Justice Hatari Waweru. They were granted 14 days within which to file the substantive application hence the application herein dated 20th March 2014 supported and filed in court on 20th March 2014 supported by the further supporting affidavit of Macharia Waiguru and Joshua Wainana Mwathi and annexing the pleadings and annexures used in NRBHC Misc. Appl 181 of 2014.

The matter herein came before Hon. Ougo J on 21/3/2014 who ordered the respondents to file and serve upon the applicants with replying affidavits within 14 days from the date thereof. The matter again came before Hon. Ougo J on 1/7/2014 who directed parties to fix a hearing date in the registry. On 3/6/2014, the 5th respondent filed a replying affidavit opposing the application for contempt. The 4th respondent filed replying affidavit on 3/6/2014. It is dated 30th May 2014. The 1st, 2nd, 3rd, 6th & 8th respondents filed their notice of preliminary objection to the applicants' application on 9/6/2014. The same is dated 2nd June 2014.

The applicants filed their objection to the preliminary objection and replying affidavit on 17th September 2014.The same is dated 15th September 2014.

At the hearing before me on 7/10/2014 I admit I had difficulties comprehending what the applicant wanted from the court as all the parties appeared restless and it was clear that only the 4th respondent had complied and filed their replying affidavit in time. The rest had either filed replying affidavit or notice of preliminary objection but had not served the same upon the applicants. In addition, such responses had been filed out of time as granted by Hon. Ougo J on 21/5/2014 and I found it unfair to expect the applicant to have perused them without service having been effected upon him. I therefore allowed only Mr. Musyoki for the 5th respondent school to respond to the application herein.

The 1st applicant was in court whereas the 2nd applicant was not. The 1st applicant urged the court to grant him orders as prayed because there was a valid decree issued by Muranga court in Civil Suit No. 316/2011 for 1,066,500 and that all the respondents except the 7th respondent had disobeyed the order of 28th February 2013. The said order as per the record herein is a garnishee order directed at Kiaguthu Boys school and Equity Bank, Muranga Branch and Kahatia Branch, issued by J.J. Masiga Resident Magistrate at Muranga in CC 316/2011 for 1,056,500.

He submitted that decree was issued on 24th February 2013 for KSh. 600,000 but that the garnishee order sought more as the respondents defaulted to pay 50,000/= per month till the attached bus is released (sic), and that this amount was arrived at after the court updated damages. He submitted that the Bank had not disputed the facts and neither did the rest of the respondents who had failed to take advantage of leave granted to them to file their replying affidavits. He sought to have the Bank's Operations Manager and General Manager committed to jail for refusing to release the money and as against the advocates cited, he urged the court to have them punished for representing their clients - the Bank and the school and for misadvising the school and the Bank to disobey the Garnishee order of 28/2/2014.

On the objection raised, the 1st applicant pointed out that the alleged orders setting aside judgments in CC 299/2010 and CC 316/2011 came after the garnishee order had been issued and defied hence the said orders were immaterial and irrelevant. He maintained that the said orders had been nullified by the respondents' own actions.

Mr. Musyoka for the 5th respondent opposed the application relying on his clients affidavit filed on 3/6/2014. He contended that the application does not state what orders were breached necessitating committal of all the respondents to jail. He added that as the record was clear that the suits in Muranga CC 299/2010 and 316/2011 had never been concluded as per the attached orders, and garnishee proceedings being execution proceedings, it is not clear how and where the applicants obtained those final orders without setting down the said cases for hearing. Further, that as CC 316/2011 was derivatory of CC 299/2010 there is no way the applicants could have obtained final judgment in the former which was

pending formal proof, as judgment in CC 299/2010 had been set aside. In other words, there was no final judgment upon which a garnishee order could issue. He further contended that the bus allegedly sold to his son the 2nd applicant was never sold and the same is in possession and use by the school. He concluded that it would be a subversion of justice to punish an advocate for representing his client as there was no evidence that the advocates were served with the order complained of requiring them to comply. He prayed for dismissal of the application with costs.

In response, the 1st applicant stated that the respondents had attempted to set aside the garnishee order by an application dated 31/10/2013 but the court declined. Further, that advocates should be punished because they condoned the acts of their clients in disobeying lawful court orders hence, they should be held liable for obstructing the course of justice since they never challenged judgment which is validity on record.

I have taken time to analyze the facts of this matter as the file is quite convoluted.

I have carefully considered the application, the documents on the record as filed in support of this application and the application for leave to cite the respondents herein for contempt of court order in HC Misc Civil Application No. 181 of 2014, the replying affidavit and the parties' submissions in court.

None of the parties to these proceedings relied on any decided cases relating to contempt proceedings. I have also considered the applicable law relating to contempt of court as set out in Section 5 of the Judicature Act Cap 8 Laws of Kenya and the fact that Kenya still relies on the English legislation relating to contempt of court proceedings.

The issues for determination in this application are in my view, as derived from the pleadings and submissions are:-

a. Whether there was an order of the court issued requiring compliance.
b. Whether there was service of the said court order upon the respondents or whether the respondents were aware of the order allegedly disobeyed.
c. Whether the respondents flagrantly disobeyed the said court order.

On whether the there was a court order complained of and subject matter of these proceedings, I am compelled to turn back to the application for leave to commence contempt proceedings against the respondents herein dated 12th February 2014 and filed in court on 20th March 2014.

The said application simply sought leave to apply for an order for committal of the respondents to jail for contempt under Section 5 of the Judicature Act ,with costs. The supporting affidavit by the applicants narrates the history of the dispute from paragraph 1-8. At paragraph 9, the applicants depose as follows:

"That the following facts are therefore known by all involved parties in this suit:

a. The sale of the bus was revealed by us to Motari and Kamunya
b. That in complete disregard for the law Motari and Kamunya have refused to release the bus
c. That there was no defense or any denial of the sale hence the decree against the school.

10. That any purported setting aside of the judgment in PMCC No. 299/10 is a nullity as same has been enforced.

11. That in complete disregard of the law, the bank and its officials have frozen the school's account and refused to release the money to us being mere garnishes.

12. That J. Motari has continued to ignore court orders and has sworn affidavits that prove impunity

13. That therefore it is clear that all parties mentioned herein are in complete disregard for the

law and should be sent to jail for contempt

14. That L.M Kinuthia, Moses Kibathi and John Njenga have failed to advise their clients to obey the law."

Annexed to the said affidavit was a notice of motion dated 20th September 2011 by the Attorney General seeking to set aside judgment in CC 299/201, order dated 20th September 2011 in the same suit by A.K Kaniaru Principal Magistrate staying execution for 2 weeks; the 1st defendant's defense in CC 316/2011; notice of withdrawal of suit against the first defendant AG; Decree in CC 316/2011; Garnishee order dated 28th February 2013; Notice of Motion dated 7th November 2103 by the 2nd, 3rd, 4th defendants in Muranga HCC 49 of 2013 and replying affidavit of John Njenga; Notice of motion dated 31st October 2013 seeking dismissal of CC 316/11 as it was hinged on CC 299/2010 with supporting affidavit; Decree in CC 299/2010; Order in CC 299/10 setting aside/expunging affidavit of service and exparte proceedings and decree of 1st September 2011; A letter to the SPM in CC 316/11 dated 12th May 2014 seeking to strike out 1st defendant's application dated 31st October 2013 and to vacate orders of 915/2014.

My meticulous examination of the said documents has not come across any fact as deponed in the supporting affidavit, relating to a specific clear and unambiguous order that was allegedly disobeyed by the respondents warranting leave of court to cite them for contempt. The affidavit of the applicants is wild enough but does not refer to a specific order for which contempt proceedings were to be commenced when leave was sought.

On whether there was service of the alleged order of the court upon the respondents or knowledge thereof. I have carefully examined the said applications seeking for leave to commence contempt proceedings against the respondents but I find no single affidavit of service attached alluding to service of a particular order upon the respondents and requiring them to obey or face penal consequences.

However, the law as it is currently, does not require that a court order must be personally served upon a party in order for it to be valid. Knowledge of court order supersedes personal service was held in **Kenya Tea Growers Association – Vs - Francis Atwoli & 5 Others**. **Petition No. 64/201** Per **Lenaola J. Kimaru J** in **Justus Wanjala Kisiangani and 2 Others – Vs - City Council of Nairobi & 3 Others (2008) eKLR** held that:-

> ***"Where any party is aware of a court order, he or she is required to obey the same and that it would be a misconception that if one is not served with the orders in a matter then they are not obliged to obey the same."***

In England, however, the Supreme Court Practice Rules makes it mandatory for the contemnor to be served and failure to do so renders the application defective. See Order 52 Rue 3 (i) of the England Supreme Court Rules. The applicant has relied on these foreign rules in support of his application.

In the present case, it has been alleged that the respondents were either aware of the court order or they failed to advise their clients to obey the court order.

I reiterate that the application for leave on record does not specify which specific order was expected to be obeyed. It has also not been proved that the said purported orders were directed at advocates cited herein or that they were aware of a specific orders or orders which they advised their clients or the incited them to disobey. In the **Kenya Tea Growers Association – Vs - Francis Atwoli Case (Supra)**, the judge held inter alias that

> ***"… When an individual has been served with and or has less knowledge of a court order and not only ignores it but in fact incites others to do the same, the threshold for contempt has been met. Francis Atwoli, in fact, went further to arrogate himself the decision to determine when the strike should end despite the fact that the court order had stopped it … His contempt was***

obvious and his conduct and words can attract no other finding"

The point from the above authority is that where a party clearly acts and shows that he had knowledge of court order, the strict requirements that personal service must be proved is rendered unnecessary. That should be the correct legal position and I fully subscribe to it. However, the proceedings before this court are different. There is no specific order referred to in the pleadings before HC Misc. Application 18/1/2014 and before this court that all the respondents as parties to the suit in question could have been aware of or served with and which they blatantly ignored. The burden of proving that a particular court order exists or that a party is aware of the existence of the court order and has disobeyed it is on the applicants, not the respondents to discharge themselves from blame or liability. This is the law and it remains so as espoused in Section 107 of the Evidence Act Cap 81 Laws of Kenya.

In this case, the applicants needed to prove that there was an order or orders issued by a court of competent jurisdiction, that the said orders were directed at all or some of the respondents herein; that the respondents had knowledge of the said orders as directed at them and that the respondents flagrantly disobeyed the said orders.

In addition, it is important to note that the standard of proof in contempt of court proceedings which are quasi-criminal in nature is much higher than proof on a balance of probabilities, and almost, but not exactly beyond reasonable doubt.

This standard was held in the Court of Appeal decision of **Mutitika – Vs - Baharini Farm Ltd (1985) KLR 229, 234** thus:-

"The standard of proof in contempt proceedings must be higher than proof on a balance of probabilities, almost but not exactly beyond reasonable doubt…"

In my analysis of the documents on record, I have established that the proceedings before Muranga Magistrate's Court shows that the applicant had an initial judgment in his favor in CMCC 299/2010 which judgment was set aside as was found by Hon. Justice Ngaa Jairus in his ruling dated 10/4/2014 in Muranga HCC 49/2013.

However, the applicants claim that they have a genuine decree in CMCC 299/2010 which they sought to execute, not in the usual manner, but through a declaratory suit in CMCC 316/2011 before the same court. Regrettably no proceedings for those two cases were produced to demonstrate how the two cases were determined, especially in the wake of orders of 5th September 2013 expunging judgment by B. Ochieng Chief Magistrate.

From the applicants' submissions and presentation in court, and as at the 1st applicant being an advocate of the High Court and therefore an officer of this court, it was expected that he would be candid and lay bare the circumstances giving rise to the alleged disobediences of the alleged court orders if at all they existed in principle. Hon. Justice Ngaa Jairus having found on 10/4/2014 that such orders did not exist on 4/10/2014, therefore, there is no order upon which this court can cite a party to proceedings for brazen disobedience thereof, and especially if the purported orders were purportedly issued before 10/4/2014?

If it is the issue of execution, I must state that here, I am confounded that a party can obtain a judgment and instead of executing it either through attachment and sale of the movable or immovable property of the judgment debtor, or commence garnishee proceedings or even issue notice to show cause why the judgment debtor should not be committed to civil jail, they chose to file a declaratory suit in a different case file involving the same parties, but before the same subordinate court. This practice is not only unacceptable as was found by Hon. Justice Ngaa Jairus in Muranga HCC 49/2013, but also offensive of the provisions of Sections 6, 7 and 8 of the Civil Procedure Act, and an abuse of the court process. This is so, especially where it is not demonstrated that the judgment debtor has no attachable property.

Then there is the complaint before this court that the school, its principal Mr. Wilson Kamunya and Mr. J. Motari Matunda litigation counsel refused to release the school bus which was purchased by the 2nd

applicant for Shs. 700,000/= and that Mr. Motari refused to advise his client the school to obey court orders. I have carefully examined the record and I am unable to find any orders issued by any court or tribunal directing the school, its head teacher, and the Board of Governors or even Mr. Motari litigation counsel to release to the 2nd applicant the school Bus. In the absence of any order, there can be no disobedience.

The other question derived from above is who sold the vehicle to the 2nd applicant? And even if there was such sale and therefore there was resistance to execution of decree, the provisions of Section 51 of the Civil Procedure Act would be invoked thus:

> ***"The decree holder would apply under that provision to have the judgment debtor detained in prison for a term exceeding 30 days"***

That is the applicable procedure under the part III of the Civil Procedure Act and Order 22 of the civil procedure rules, where execution by way of attachment and sale is carried out by a licensed auctioneer.

A licensed auctioneer has not filed any affidavit alleging resistance to execution by way of attachment. Furthermore, the law does not contemplate resistance to execution of decree as being tantamount to contempt of court subject matter of these type of proceedings.

On the ground that the purported setting aside of decree in CMCC No. 299/2010 is a nullity as the same has been enforced, the record supplied by the applicants herein is clear that the judgment in CMCC 299/2010 was set aside. There is no evidence that the setting aside was reversed or that notwithstanding the setting aside thereof the decree had been enforced prior to the setting aside. And if the decree was enforced therefore there being nothing to set aside, then what is the applicants' complaint before this court? It must be that they were unable to enforce decree and are seeking the intervention of the court by way of contempt proceedings to compel such enforcement!

Regrettably, and as I have stated above, contempt proceedings are not the same as the resistance to execution proceedings under Section 51 of the Civil Procedure Act.

The applicants have not demonstrated to this court how they have been obstructed from realizing the fruits of their lawfully obtained judgment. The court is left in the arena of speculation as to what happened to the orders setting aside judgments. And if decree in CMCC 299/2010 was enforced, how did CMCC 316/2011 become the avenue through which execution proceedings would be commenced as opposed to CMCC 299/2010 itself?

This court observes that there has been total and brazen disregard of the rule of law and the court process has flagrantly been abused by the applicants. This court will endeavor to ensure justice is accorded to all parties who seek the court's intervention in resolving their disputes, but this court must strive to ensure that the conduct of proceedings is orderly, without such order, chaos reign like in the instant case.

Assuming that CMCC 316/2011 was a proper suit, what happened to the order issued by Masiga J.J. on 13/3/2013 following preliminary objections filed on 28/3/2013 and 26/4/2013 by the applicants which preliminary objections were overruled and an order made that the application dated 06/02/2013 be fixed for hearing? Secondly that *"judgment of 16/7/2012 is only interlocutory not final and therefore the matter should be fixed for formal proof hearing and that no attempts should be made to execute"*

The applicants have glaringly laid bare before this court their utter disregard of the rule of law and court processes. They have in possession court orders setting aside the proceedings and orders which they are seeking to execute through contempt proceedings. This leaves this court with no option but to find that it is the applicants who are disregarding or disobeying court orders.

Attachment of debts under Order 23 of the Civil Procedure Rules does not require a fresh suit against a garnishee otherwise the process ceases to be an execution process. By filling PMCC 316/2011 and HCC 49/2013, the applicants were seeking to execute decree in CC 299/2010 through the said suits which the

Hon. Ngaa J found unacceptable and I subscribe to his ruling.

And if the bus allegedly purchased by the 2nd applicant was withheld by the school, the question is, did he obtain express permission of the court under Order 21 Rules 61 of the Civil Procedure Rules which require him as a decree holder to bid or buy property in execution of his own decree only with express leave of court?

What stems from these proceedings is that there was no order, even Garnishee order capable of enforcement at the time leave of court to cite the respondents for contempt of court was sought and obtained. If that were not the case, the applicants could not have filed HCC 49/2013 and which latter suit determined that there were no valid orders capable of enforcement.

It is on record that upon obtaining and service of the Garnishee order in CC 316/2011 the Bank did freeze the school account to prevent withdrawals by the school. This was in obedience of the said order, which order I find, was irregular. The order nisi under the garnishee proceedings is never final. It is interim to enable the garnishee appear and either admit that it holds money in favor of the judgment debtor or not and if so how much. The record shows that it was the freezing of the school's bank account that prompted Mr Motari's application dated 28/2/2013 and stay orders issued by the court on 13/5/2013 barring any execution hence, no orders were disobeyed by any party capable of being cited for contempt as there is no evidence that after the order of 13/5/2013, the court issued other order which has been disobeyed by the respondents herein.

Finally, is the issue of whether advocates for the parties can be cited for contempt of court for advising their clients or representing them in a suit and for making/lodging spurious applications which tend to obstruct the cause of justice. I have perused the records herein and I do not find any application by any of the respondents that fits the description of *"spurious applications"*. Challenging a decision of the court process is permitted by law. It is the defendant's right to be heard by the court to ventilate their grievances and not to be ousted from the judgment and justice seat by interlocutory and exparte judgments and orders. It is equally the defendants and indeed and every party's right to be represented in court in any dispute by an advocate of their choice. Where such due process has been followed, and in the absence of any evidence that the advocates on record incited their clients to disobey the court orders, I find no merit in the allegation and proceed to dismiss it.

The upshot of all the above expositions is that the applicants have miserably failed to demonstrate and persuade this court that there was any specific ,clear and unambiguous order of the court, directed at the respondents herein whether jointly or severally, and or that such respondents were served and or made aware of the said court orders and that they chose not to obey those orders as directed at them by the court, warranting contempt proceedings herein. The purported orders, are in my view, imaginary and speculative.

Accordingly, I dismiss the applicants' application by way of notice of motion dated 20th March 2014 seeking to have the respondents be committed to prison for a period not exceeding six months.

Having found that there was no order for enforcement and therefore capable of being disobeyed by the respondents, and as there is no single decree against all the respondents, the prayer for payment of interest on the original decretal amounts at commercial rates does not hold and I accordingly dismiss it.

Concerning the prayer for costs in HCC 18/2014 (for leave) to be paid by the respondents, as costs of that application would only be available to the applicants if they had succeeded in this application and having failed to persuade this court that they even deserved leave to commence these proceedings in the first instance, I accordingly dismiss that prayer.

On the prayer for costs incurred in pursuing the relevant decretal amounts, again, this not being declaratory or execution proceedings, this prayer is not available to the applicants. They can access it before the relevant court and relevant proceedings. I dismiss the same.

Accordingly, the applicants' application dated 20th March 2014 is dismissed on all prayers with costs to the respondents herein. All respondents are discharged.

Dated, signed and delivered at Nairobi this 5th day of December, 2014.

R.E. ABURILI

JUDGE