



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO.165 OF 2020

DIRECTLINE ASSURANCE COMPANY LIMITED.....1ST APPLICANT
ROYAL MEDIA SERVICES LIMITED.....2ND APPLICANT
ROYAL CREDIT LIMITED.....3RD APPLICANT
SAMUEL KAMAU MACHARIA.....4TH APPLICANT
PURITY GATHONI MACHARIA.....5TH APPLICANT
ISAAC NGARU.....6TH APPLICANT
DAVID NGUGI.....7TH APPLICANT

VERSUS

TERRY WIJENJE.....1ST RESPONDENT
CODFREY KIPTUM.....2ND RESPONDENT
INSURANCE REGULATORY AUTHORITY.....3RD RESPONDENT
MERCY WAIRIMU KIANA.....4TH RESPONDENT
JOHN KATIKU.....5TH RESPONDENT
RODGERS KINOTI M'ARIBA.....6TH RESPONDENT

RULING

Ruling herein relates to applicant dated 24th June, 2020 and filed by the applicants under the provisions of section 5 of the Judicature Act, section 14 of the Contempt of Court Act, 1981 of England, Cap 49 Laws of England and Rules 81.8 and 81.10 of part 81 of the Civil Procedure (Amendment No.2) Rules, 2012 of England and Wales and seeking for orders that;

This court be pleased to give the applicants leave to file contempt of court proceedings against the respondents in the originating applicant notice herein.

The costs be in the cause.

The applicant is supporting by the Supporting Affidavit of the 4th applicant, Samuel Kamau Macharia and on the grounds that the law of contempt applicable is contained in Part 81 of the Civil Procedure Rules (Amendment No.2) of England and Rule 12 requires an applicant for punishment or anybody for committal of contempt of court taking the form of interferences with administration of justice, to obtain leave of court. The applicants have relied on the cases of **Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others [2014] eKLR** and **Kenya Human Rights Commission v Attorney general & another [2018] eKLR**.

Other grounds in support of the application are that the respondents have during the pendency of this suit committed two contempt of court;

a) *In making a collusive bargain to defeat the ends of justice in this case by conferring on the claimant the management of 1st applicant business instead of leaving that issue to be determined by the court. On 27th April, 2020 the 2nd respondent summoned the 6th and 7th respondents in the originating summons and the 4th to 6th respondents in the claim and ordered them to take over then management of the company from the 1st respondent and hand it over to the claimant. On 29th April, 2020 the 6th respondent reduced that into an email which he sent to the claimant.*

b) *The respondents have sought to destroy the subject matter of this suit as explained in the statement and affidavit herein.*

The claimant accepted the plan of action through an email sent to others and proposed that all of them meet on 30th April, 2020 and execute the plan and when the applicants became aware of that fact, they sent a letter of warning that the same entailed committing the contempt taking the form of interfering with the administration of justice through a collusion bargain or destruction of the subject matter of the suit which was done on 4th May, 2020.

The 2nd and 3rd respondents responded to the warning through letter dated 29th May, 2020 in which they instructed the 4th and 6th respondents to carry out that plan.

The power to commit to jail contemnors is the machinery used to uphold the rule of law and the authority of the court and the applicants have dully informed the respondents that they would be filing this application.

In his Supporting Affidavit, the 4th applicant Mr Macharia avers that he is the chairman of the board of directors of the 1st applicant with authority form all the applicants to support the instant application and avers that as one of the subscribers to the memorandum and articles of association of the 1st applicant, the 6th applicant has ceased to be an employee of the 1st applicant.

Mr Macharia also avers that the respondents have made a collusion bargain to defeat the ends of justice in this case through destruction of the subject matter of the suit. The law of contempt of court requires application for leave in filing an application for a person to be committed to jail as held in **Mirugi Kariuki v Attorney General, Civil Appeal No.70 of 1991**. An applicant must have a *prima facie* case that there has been interference with the administration of justice.

In the Originating Application Notice the applications case if that;

1. *This court be pleased to declare and hold that being aware of the proceedings of this court in **Nairobi Employment and Labour Relations Court Case No.165 of 2020; Terry Wijenje v Directline Assurance Company Limited, Royal Credits Ltd, Royal Media Services Ltd, Samuel Kamau Macharia, Mrs Purity Gathoni Macharia and the Estate of Dan Karobia** the respondents are in contempt of court taking the form of interfering with the administration of justice by an improper colluding to defeat the ends of justice by planning to hand over the management of the 1st defendant's business to the 1st respondent through the 2nd to 6th respondents during the pendency of this suit instead of leaving this court alone to determine the person who is entitled to lawfully manage it.*

2. *This court be pleased to declare and hold that being aware of the proceedings of this court in **Nairobi Employment and Labour Relations Court Case No.165 of 2020; Terry Wijenje v Directline Assurance Company Limited, Royal Credits Ltd, Royal Media Services Ltd, Samuel Kamau Macharia, Mrs Purity Gathoni Macharia and the Estate of Dan Karobia** the respondents are in contempt of court taking the form of interfering with the administration of justice by conspiring to destroy the subject matter of this suit namely the business of the 1st respondent which the 1st respondent is seeking to manage during the pendency of this suit through the instrumentality of the 2nd to 5th respondents.*

3. *This court be pleased to declare and hold that by purporting to arrange to manage the business of the 1st defendant, the respondents have committed contempt taking the form of interfering with the administration of justice.*

4. *That the 3rd respondent do pay a fine of Kshs.10 million.*

5. *That the 1st, 3rd to 5th respondents be each committed to jail for 6 months for committing contempt of court number 2 and 3 above.*

6. *That the costs of this application be provided for.*

The application is made on the grounds that the court has under section 5 of the Judicature Act jurisdiction to prevent interference with administration of justice in suits like this one which is pending before court by punishing the contemnors with imprisonment or fines to uphold the rule of law and its authority.

The contempt of court is taking the form of interfering with the administration of justice by an improper colluding to defeat the ends of justice by planning to handover the management of the 1st defendant's business to the 1st respondent through the 2nd to 6th respondents during the pendency of this suit instead of leaving it to the court to determine the person who should lawfully manage it. It is a contempt of court taking he form of interfering with the administration of justice for people to conspire to destroy the subject matter of this suit namely

the business of the 1st respondent and the claimant is seeking to manage it during the pendency of this suit through the instrumentality of the 2nd to 5th respondents.

With full knowledge of proceedings herein, the claimant who is seeking reinstatement to the office of managing director, the 2nd respondent and Commissioner for Insurance, the Chief Executive Officer of the 3rd respondent have sought to hand over the 1st respondent's business to the claimant through the 3rd to 5th respondents thereby committing contempt of court so as to defeat the object of the defence of the respondents herein.

At the behest of the 1st claimant in the statement of claim on 27th April, 2020 and 3rd April, 2020 application, the claimant is seeking for an order of reinstatement as the managing director of Directline Assurance Company Limited and while these are pending the 2nd respondent summoned to his office his self-appointed directors, the 3rd to 6th respondents and instructed them on how to wrest the management of the 1st respondent business from its directors lawfully elected by the company on 18th March, 2020. To facilitate that objective the 1st and 3rd respondents in abuse of their powers under the Insurance Act have declined to approve as the 1st respondents' directors Dr S.K. Macharia, Mr Bashir Mburu, Mr. Maina Njakwe to facilitate and justify the management of the 1st respondent's business by the 1st to 6th respondents.

Acting on the directions of the 2nd and 3rd respondent, the 6th respondent through an email dated 29th April, 2020 described how the 2nd respondent's instructions were to be carried out by them and the claimant.

On 4th May, 2020 the applicants drew the attention of the respondent of the fact that the planned takeover of the 1st respondent by them on 5th May, 2020 constituted contempt of court taking the form of interference with the administration of justice.

On 29th May, 2020 the 2nd respondent informed the 3rd respondent that he considered the 4th and 5th respondents to be directors of the company who should be involved in running it instead of its management.

In view of Court of Appeal **Civil Application No.39 of 1990 – Refrigerator and Kitchen Utensils Ltd v G P Shah and Others** that it is essential for the maintenance of the rule of law and good order that the authority and dignity of the court be upheld at all times and court should not condone deliberate disobedience of its orders and contemnors should be dealt with firmly. The making of a collusive bargain to defeat the ends of justice is contempt of court as held in **M'Gregor v Barret [1848] 6cb** and the respondents have made such collusive bargain to defeat justice in this case. In the case of **Ibrahim Haji Issak v Kenya Meat Commission & another [2013] eKLR** the respondents were found guilty of contempt of court and the court proceeded to fine them of Ksh.10 million and in default committed to civil jail and similar orders should be issued herein.

The application is also supported by a statement and affidavit of the 1st applicant, Samuel Kamau Macharia.

The applicants submitted that claimant filed the suit herein seeking reinstatement back to the office of chief executive officer (CEO) with the 1st applicant and following termination of her employment on 17th December, 2019. The applicants filed application seeking to amend the defence and counterclaim on the grounds that the termination of the claimant be declared to have been lawful for gross misconduct and that during her employment she breached the implied terms of the contract of service and breached the fiduciary duty she owed the employer, she was granted a loan in contravention of the Insurance Act, she borrowed ksh.196,524,049 without security and that the employer is dismissing an employee in exercise of the managerial prerogative and the role of the Insurance Regulatory Authority is merely to ensure that the person nominated by the company to serve as the principal officer is suitable or not.

In the Memorandum of claim the claimant is seeking reinstatement as CEO and on 3rd February, 2020 she filed application seeking for orders of reinstatement and by ruling of the court, such orders were not granted.

The claimant in collusion with the respondents have devised ways to achieve a reinstatement through the Insurance Regulatory Authority as the regulator in abuse of the powers under the law to only regulate and not to appoint employees for the 1st applicant. The IPR has appointed the 4th to 6th respondents to take over the business of the respondent and hand it over to the claimant. By email dated 29th April, 2020 the 2nd respondent convened a meeting to assist the claimant to achieve her improper goals and present were the 3rd to the 6th respondents and where instructions were issued to hand over the 1st applicant business to the claimant.

The meeting was followed by an email by the 6th respondent and which formulated the plan of action and which the claimant accepted and further proposed a meeting for 30th April, 2020.

The applicants also submitted that once the suit was filed, the subject matter came into the custody of the court and on one is allowed to interfere with the matter while pending in court. By the respondents allowing the claimant to manage the business of the 1st respondent, it was clear there was a determination to undermine the court process and hence interference with the cause of justice. This is in contempt of court and the respondents should be punished.

The applicants relied on several authorities. In the case of **Akber Abdullah Kassam Esmail v Equip Agencies Ltd & 4 others [2014] eKLR** the court held that there is power to punish for contempt of court so as to protect the cause of justice. In **Christine Wangari Gachege v Elizabeth Wanjiru Evans & 111 others [2014] eKLR** the court held that an applicant seeking punishment of anybody for committal for contempt of court taking the form of interference with administration of justice must obtain leave of court. The applicants have applied for leave following the collusion and interference of the respondents in the administration of justice by seeking to have the claimant take over the business of the 1st respondent to circumvent the instant suit where the claimant is seeking reinstatement and which has been declined by the court in the interim.

The applicants also submitted that

In reply, the **1st respondent/claimant filed her Replying Affidavit** and avers that the application by the applicants is fatally defective and ought to be dismissed on the grounds that the 4th applicant who has supported the application is an undercharged bankrupt vide Gazette Notice No.7678 of 16th September, 2020 and despite being bankrupt the 4th respondent continues to hold office as a self-declared director and chairman of the board of the 1st respondent contrary to section 223, 228 and 230 of the Companies Act. The 4th respondent has no capacity to bring the present application as the law prohibits an undercharged bankrupt from being a director of a company.

The claimant also avers that the court lacks jurisdiction to entertain the present application by the applicants as it is not related to an employer-employee dispute as filed herein.

An examination of the email sent by the 6th respondent to the 1st, 4th and 5th respondent is that the 6th respondent was a director of the 1st applicant until 27th September, 2020 and the recipients of the email are directors of the 1st applicant and the contents therein relates to the conduct and management of the affairs of the 1st applicant company. The claimant was not the author or the sender of this email. The email was sent in the ordinary course of business between directors of the 1st applicant and relates to internal management of the company.

The applicants cite the 2nd to 6th respondents but these are not in any way in an employer-employee relationship with the parties to the suit. One to be liable for contempt the applicants must demonstrate that one knowingly did or omitted to do something that would interference with the substratum of the claim. The email complained of was not authored by the claimant. There was no collusion, conspire or scheme by the respondents to defeat the cause of justice.

The claimant also avers that there is a suit in **High Court E278 of 2019 Direct line Assurance & 4 others v Sureinvest Company Ltd & 15 other** and the essence of the suit is a dispute with regard to the shareholding of the 1st applicant company and the conduct of affairs of the board of director. What the applicants are seeking herein would amount to interference with the affairs of the 1st respondent company and before the matter before the High Court is heard. This application should be dismissed.

The claimant also submitted that this court lacks jurisdiction to grant the orders sought pursuant to article 162(2) of the Constitution and under section 12 of the Employment and Labour Relations Court Act. The application before court relates to the internal affairs of the 1st respondent company and following an email sent by the 6th respondent and which was not authored by the claimant. The matters with regard to the affairs of the 1st respondent are subject of High Court E278 of 2019 Directline Assurance & 4 others v Sureinvest Company Ltd & 15 others and hence deny this court jurisdiction. the claimant cannot be held liable for any alleged contempt committed by another director of the company and relied on the cases of **Peter Kahara Munga v Wairia Mwangi, Governor Murang'a County & 2 others [2018] eKLR; George Onyango Ochieng v Chemilil sugar Company Ltd [2014] eKLR; and Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR.**

In reply, the **2nd to 6th respondents filed the Repling Affidavit of Godfrey Kiptum, 2nd respondent** and who avers that he is the Commissioner of Insurance and Chief Executive Officer of the 3rd respondent and conversant with facts herein and with authority of the respondents to reply herein. He avers that the application before court is untenable in law and short of the standard of proof for contempt of court allegations and marred with speculation and misleading information.

Mr Kiptum also avers that section 3 of the Insurance Act appoints the Commissioner of Insurance who is responsible for the general administration of the Act and under section 168 insulates the commission of Insurance from prosecution over acts done or intended to be done in good faith under the Act. The application made against the 3rd respondent violates the law and is unsustainable.

Under section 3(2) of the Insurance Act the 3rd respondent is established as a body corporate and can be sued and sue and no officer of the 3rd respondent can assume personal liability over the alleged acts and omissions done by the 3rd respondent or for acts done under the Act.

The subject of the applicants application is *sub judice* and before the **High Court of Civil Suit No.E278 and E277 of 2019 Directline Assurance & 4 others v Sureinvest Company Limited & 15 others** a fact which is admitted and such matters cannot be addressed by this court. The allegations against the 2nd to 6th respondents in relation to the institution of criminal proceedings against the managers of the 1st applicant are *sub judice* and before the **Chief Magistrates Court, Criminal Case No.1660 o 2019 Republic v Anthony Macharia and Bashir Mburu** and such matter should not be entertained before this court.

The cause of action herein relates to an employment matter and on the instant application the court lacks jurisdiction. The 4th respondent I not a director of the 1st applicant as alleged and cannot swear affidavit for and on behalf of the company. The application by the 4th respondent to the 3rd respondent to approve as a director of the 1st applicant is pending approval given the fact that he is an undercharged bankrupt and hence he is incapable of taking any action for the 1st applicant company.

Mr Kiptum also avers that the 3rd respondent is a statutory agency of the government with specific mandate under the Insurance Act and the 4th, 5th and 6th respondents are statutory directors of the 1st applicant appointed the 3rd respondent by virtue of section 67 of the Insurance Act and the 1st applicant is one of the companies licenced and regulated and supervised by the 3rd respondent and has power to call for information and production of books and papers relating to the insurance business under section 7 of the Insurance Act. Following complaints with regard to the 4th applicant a show cause notice issued and some directors responded save, the 1st respondent did not respond and the 3rd respondent found her unfit to hold office as the chief executive officer. The complaints were also submitted to the Director of Criminal Investigations for further investigations and whereupon the applicants used to oust the 1st respondent form office and employment

which issue has been presented before the Insurance appeals Tribunal and is now pending before the court.

The allegations by the applicants that there is an illegality and interference with the mandate of the court over the matter is without foundation.

Mr Kiptum also avers that on 28th April, 2020 in the supervisory role he summoned the board of the 1st applicant to give an update on the status of the governance of the insurer and in attendance were the 6th and 7th applicants, 4th and 6th respondents and the directors submitted that they were facing difficulties in their management of the 1st applicant due to frustrations from the 4th applicant and an email was written directing the 6th and 7th applicants to take up their roles as directors of the company.

On 28th April, 2020 a meeting was held with the directors of the 1st applicant and to discuss 4th applicant's concerns as pertains the directorship and 1st applicant's business and vacancy of the chief officer and on the alleged appointment of Teresa Kabura Mburu, the 3rd respondent as the regulator there is a statutory obligation to accord the inspecting officers the necessary facilitation to check on operations. Such officer was then obstructed by Anthony Macharia and Bashir Mburu by purporting to take over the inspection of the company and leading to criminal proceedings in **Chief Magistrates' Court, Criminal Case No.1660 o 2019 Republic v Anthony Macharia and Bashir Mburu**.

The application before court should be dismissed with costs.

The respondents also submitted that the court is without jurisdiction to grant the orders sought seeking committal of the respondents for alleged contempt of court. Section 168 of the Insurance Act insulates the respondents from prosecution in execution of their statutory duties under the Act. The 3rd respondent through the 2nd respondent there was appointment of three statutory directors over the 1st applicant as required under the Act for the sole purpose of addressing internal wrangles and to look into the shareholding and governance structures to ensure compliance with the Insurance Act. This is not done in collusion or to interfere with proceedings herein. No bad faith has been demonstrated and the mere appointment of the 4th to 6th respondents as per the law and convening a meeting in this regard to monitor the 1st applicant status cannot be in contempt. In the case of **Civil Application No.3739 of 1995 Malike Co. Ltd v Attorney general** the court considered the import of section 168 of the Insurance Act and held that the law protects the Commission of Insurance for anything done or intended to be done in good faith under the Act.

The matters before court are *sub judice* and cannot apply to be in contempt of court. The directors of the 1st applicant failed in their duties and upon complaints the 3rd respondent appointed the 4th to 6th respondents. Pending are suits addressing the issue of directorship of the 1st applicant and predicated on the facts subject of the instant application. In **High Court, Civil Suit No.E278 and E277 of 2019 Directline Assurance & 4 others v Sureinvest Company Limited & 15 others**. The applicants cannot address similar matters in issue and before another court which preceded these proceedings. To do so is in abuse of court process and the application before court should be dismissed with costs.

Determination

On the extensive affidavits and written submissions the issues which emerge for determination are whether the court has jurisdiction to determine the instant application for contempt of court; and whether the orders sought should issue.

The applicants are seeking the court to declare that the respondents, being aware of these proceedings are in contempt of court taking the form of interfering with the administration of justice by an improper colluding to defeat the administration of justice by planning to hand over the management of the 1st applicant to the claimant through the 2nd to 6th respondents and that they are conspiring to destroy the subject matter herein and the business of the 1st applicant during the pendency of this suit.

The claimant in response asserts that the subject email complained of by the applicants was not authored by her and she was just a recipient. The 4th respondent has no capacity to make affidavit for the 1st applicant being an adjudged bankrupt and there is no contempt.

The 2nd to 6th respondents case is that they are regulated under the Insurance Act with duties and responsibilities over the entity of 1st applicant and the matters herein relates to the shareholding of the company and outside the jurisdiction of this court. There exists other matters before the High Court addressing similar questions and shareholding of the 1st applicant and the subject application is *sub judice* and there is no contempt as the 3rd respondent and its officers are protected from prosecution and liability in their statutory mandate taken in good faith.

An applicant in a contempt application has the onus to prove the existence of contempt and, in discharging this onus, the applicant must show this existence of contempt of Court beyond reasonable doubt as held in the case of In **J G K v F W K [2019] eKLR** the court held that the standard of proof required in contempt of court proceedings is that;

*... the standard of proof in contempt matters is beyond the balance of probabilities. There is good reason for the high standard; the proceedings are quasi-criminal, penal sanctions are likely to be imposed and the liberty of the contemnor is at risk. ... and in in **Katsuri Limited v Kapurchand [2016] eKLR** where it was held:*

".....Although the proceedings are civil in nature, it is well established that an applicant must prove the elements beyond reasonable doubt, at least higher than the standard in civil cases, The fact that the liberty of the defendant could be affected means that the standard of prove is higher than the standard in civil cases. It is incumbent on the applicant to prove that the defendant's conduct was deliberate in the sense that he or she deliberately or wilfully acted in a manner that breached the

order ...”

In the case of **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR** the court held that;

These requirements – that is the refusal to obey should be both wilful and mala fides, and that unreasonable non-compliance, provided it is bona fide, and does not constitute contempt – accord with the broader definition of the crime, of which non-compliance with civil orders is a manifestation. They show that the offence is committed not by mere disregard of a court order, but by the deliberate and intentional violation of the court’s dignity, repute or authority that this evinces Honest belief that non-compliance is justified or proper is incompatible with that intent. The Constitutional Court of South Africa, underlined the importance to the Rule of Law, of compliance with court orders in the following terms:-

“Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. The Constitution states that the rule of law and supremacy of the Constitution are foundational values of our society. It vests the judicial authority of the state in the courts and requires other organs of state to assist and protect the courts. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. Failure to enforce court orders effectively has the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law.”

The acts complained of must impede on the dignity, repute or authority of the court. Such must be deliberate and intentional. Such must have the effect of eroding the rule of law.

In this case, the acts complained of are that;

(a) In making a collusive bargain to defeat the ends of justice in this case by conferring on the claimant the management of 1st applicant business instead of leaving that issue to be determined by the court. on 27th April, 2020 the 2nd respondent summoned the 6th and 7th respondents in the originating summons and the 4th to 6th respondents in the claim and ordered them to take over then management of the company from the 1st respondent and hand it over to the claimant. On 29th April, 2020 the 6th respondent reduced that into an email which he sent to the claimant, the 6th to 7th respondents. The email read as follows;

The company we have been charged to steward in facing very serious challenges. Ever since the shareholder convened GM was held, we have seen developments that point to a paralysis of the functioning of the board and significant shareholder interference. To be specific, one of the scheduled board meetings was sabotaged under the instructions of the shareholder. Additionally, the GM appointed two new executives who have already taken up office. One of the executives also happens to be a non-executive members of this board. The company secretary was also terminated and a new own purportedly appointed, the above developments amongst other acts do not ogle [augur] well for the smooth operations of the company. It is my considered view that this board must stand up and take up its rightful position to defend the company against unjustified mismanagement that could potentially jeopardise the interests of all shareholders who’s this board owes fiduciary duty.

I therefore wish to recommend that the board resolves to resist any external manipulation that by ensuring it makes all critical decisions. To achieve this goal, we must find a way of convening meetings as deemed necessary. I propose we appoint the legal counsel (Ms Isabella) to serve as the interim company secretary as we work out modalities of reinstating the outsourced service that has been terminated without the board’s approval.

(b) The respondents have sought to destroy the subject matter of this suit as explained in the statement and affidavit herein.

The court reading of the subject email outlined above is that the 2nd respondent, and Commissioner of Insurance with mandate under the Insurance Act and having received complaints with regard to the 1st applicant noted the obvious challenges and potential paralysis of the functioning of the board;

- two new executives had been appointed;
- one executive was a non-executive member of the board;
- company secretary was terminated and a new one appointed;
- the board was required to protect the interests of the shareholders; and
- Recommended a meeting be held and proposed the appointment of an interim company secretary and modalities of *reinstating the outsourced service that had been terminated* was addressed.

Does this amount to interference, collusion and conspiring to defeat the cause of justice?

As set out above, Contempt of court consists in unlawfully and intentionally violating the dignity, repute or authority of a judicial body, or interfering in the administration of justice in a matter pending before it.

In addressing the question of contempt of court, the court in **Kenya Human Rights Commission v Attorney General & another [2018]**

eKLR relied on the case of **Nthabiseng Pheko v Ekurhuleni Metropolitan Municipality & another CCT 19/11(75/2015)** where it was held that;

The rule of law, a foundational value of the constitution, requires that the dignity and authority of the courts be upheld. This is crucial, as the capacity of courts to carry out their functions depends upon it. As the constitution commands, orders and decisions issued by a court bind all persons to whom and organs of state to which they apply, and no person or organ of state may interfere in any matter, with the functioning of the courts. It follows from this that disobedience towards courts orders or decisions risks rendering our courts impotent and judicial authority a mere mockery. The effectiveness of court orders or decisions is substantially determined by the assurance that they will be enforced.

The elements of disobedience and interference in any matter and functioning of the court in any proceedings is in contempt.

The above put into account, it is common cause that there exists **High Court Civil Suit No.E278 of 2019 Directline Assurance & 4 Others v Sureinvest Company Limited & 15 others** addressing the shareholding of the 1st applicant. There is also **High Court suit No.E277 of 2019 Directline Assurance Company Limited v Samuel Kamau Macharia & 3 others** and where the instant claimant is seeking for orders that the letter terminating her employment and dated 30th August, 2019 be suspended and the 2nd to 5th applicants herein be restrained from managing the business of the 1st applicant as alleged shareholders. There are applications seeking to refer these suits to arbitration.

These suits before the High Court touch largely on the shareholding of the 1st applicant. These suits are on-going and unresolved.

On the application before court, it is apparent that there are unresolved disputes between the parties and leading to various suits filed before the High Court and particularly **High Court of Civil Suit No.E278 and E277 of 2019 Directline Assurance & 4 others v Sureinvest Company Limited & 15 others** and which relates to the shareholding in the 1st applicant company. There is also pending in the subordinate court **Chief Magistrates' Court, Criminal Case No.1660 o 2019 Republic v Anthony Macharia and Bashir Mburu** following alleged obstruction of one Teresa Mburu an officer of the 1st applicant from inspection on 23rd August, 2019.

On the instant application that there is contempt of court by acts of collusion, conspiring and interference with the cause of justice by the respondents herein who have the intent of handing over the 1st applicant business to the claimant and also reinstate her, on the face of matters before this court and what subsists before the High Court, to go into the 1st applicant shareholding would be to impede on the matters earlier filed and are before a competent court with jurisdiction to address, the High Court.

The dispute herein shall remain as registered by the claimant against the respondents. That there is *unfair, unlawful and illegal* termination of employment. together with the Memorandum of Claim, the claimant filed a Notice of Motion under Certificate of Urgency and seeking for orders of *stay of two resolutions passed at the special General Meeting of the shareholder of the 1st respondent on 18th March, 2020 ... to order unconditional reinstate of the claimant/applicant to her employment of the 1st respondent company without loss of benefits and with all prior rights, access and approvals incidental to the position in compliance with the orders from the Insurance Appeals Tribunal ...* and which orders were not allowed in the interim.

The court takes it the position as at 23rd April, 2020 subsists when the court issued the first directions herein. The claimant employment stands terminated and there was no reinstatement in the interim. Such was declined in the interim.

As other suits on the directorship and shareholding of the 1st respondent progress, the claimant shall be heard on the merits of her claim herein.

In the applicant by the applicants, the 4th respondent in the affidavit averred that there is a counterclaim. The respondents are therefore at liberty to move the court in this regard and be heard on the merits.

Taking the above into account, the court finds no matter of contempt. to stop all else and address 1st applicant shareholding, this court is without jurisdiction, the High Court is seized of these matters in pending suits. for this court to address such matters and outside of the dispute registered herein with regard to the employment and labour relations and for connected purposes would be contrary to the rules of *sub judice*.

Before conclusion, the respondents have challenged the standing of the 4th respondent to file the instant application. That he is an undercharged bankrupt and therefore has no capacity to file and support the application for contempt. In the Memorandum of Claim, the claimant at paragraph 5 the 4th respondent/4th applicant is defined. This is her suit as against the respondents. The remedies sought relates to the 1st respondent.

Without going into the merits of the claim and before the defence is filed, the claimant's claim seized by the court should be heard on its merits.

Finally, The respondents have challenged the jurisdiction of the court to hear the instant application on the grounds that the court has no jurisdiction. Such matter has already been addressed by the court vide ruling delivered herein on 16th September, 2020. There is no appeal pending or one that has been brought to the attention of the court on this subject.

This court is granted specialised mandate under the Constitution, 2010 under Article 162 to address employment and labour relations disputes and for connected purposes and under such constitutional mandate, there is the inherent power to punish for contempt.

Accordingly, on application dated 24th June, 2020 and 23rd June, 2020 the court finds no matter of contempt by the respondents which requires them to respond to. Applications are hereby dismissed. the costs shall abide the outcome of the claim.

DELIVERED IN OPEN COURT AT NAIROBI THIS 29TH DAY OF APRIL, 2021.

M. MBAR?

JUDGE

In the presence of:

Court Assistant: Okodoi

..... and