IN THE COURT OF APPEAL

AT NAIROBI

CORAM: KARANJA, MWERA & MWILU, JJ.A

CIVIL APPEAL NO. 33 OF 2012

BETWEEN

SHIMMERS PLAZA LIMITED .....APPELLANT

AND

NATIONAL BANK OF KENYA LIMITED…….RESPONDENT

(An application for contempt proceedings against the Managing Directors of the Respondent Company for deliberately disobeying this Honourable court's Order issued on 25th September, 2013 in Civil Appeal No. 33 of 2012 being an appeal from the Ruling and Order of the High court of Kenya at Nairobi (Kimondo, J) dated 27th January, 2012 in HCCC NO. 895 OF 2009)

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This appeal came for hearing before this Court on 26th September, 2013. The appellant **Shimmers Plaza Limited** was represented by learned counsel R. O. Kwach and Manjit Billing while the respondent **National Bank of Kenya Limited** was represented by C. O. Rachuonyo.

The appeal was challenging the ruling of Kimondo, J. dismissing the appellant's application seeking an injunction as against the respondent in which the appellant sought to have the respondent restrained from selling the appellant's property known as **Title No. L. R. 55525 (L.R. No. 1870/IX/128)** situated in Westlands pending the hearing and determination of **Nairobi Civil Suit No. 895 of 2009.**

We heard the parties, after which we reserved the judgment for delivery on 29th November, 2013. In his submission, Mr. Kwach learned counsel for the appellant entreated this Court to allow the appeal and grant restraining orders against the bank so that the subject matter of the suit pending before the High Court could be preserved. He informed the court that the appellant was prepared to pay the outstanding principal amount within sixty (60) days of the hearing date as they awaited the computation of the interest which appeared to be the bone of contention.

The appeal was strongly opposed by Mr Rachuonyo, learned counsel appearing for the respondent. After hearing the parties, we gave orders to have the status quo prevailing then to be maintained pending the delivery of the judgment which was fixed for 29th November, 2013. For some reason or other, the

judgment was not delivered as scheduled on 29th November, 2013 and it was deferred to 13th December, 2013. The said date was declared a public holiday and the judgment was pushed ahead to 20th December, 2013 on which date judgment dismissing the appeal was delivered.

In the meantime, the respondent went ahead and in total disregard of the court order on *maintenance of status quo* proceeded to dispose of the property and the same was transferred to Cape Suppliers Limited on 15th October 2013, and the transfer registered on 30th October 2013. This prompted the filing of the notice of motion dated 4th December, 2013 under certificate of urgency, which is brought under **Section 5 of the Judicature Act** and **Section 3A** and **3B of the Appellate Jurisdiction Act.**

The application seeks orders of committal to Civil Jail for six (6) months against Mr. Munir Sheikh Ahmed, the Managing Director of the Respondent, and Mr. Clifford Rachuonyo Advocate who was appearing for the respondent in the appeal. However, when the application came up for hearing on 19th May 2014, learned counsel for the applicant made an informal application to withdraw prayer no. 2 which was in respect of Mr Rachuonyo. There being no objections by the other counsel present that application was allowed, and so Mr Rachuonyo was let off the hook as it were. This ruling therefore only relates to Mr. Munir Sheik Ahmed (respondent).

The application is predicated on two grounds on its face and supported by the affidavit of M. Billing sworn on 4th December, 2013. The gravaman of the grounds and depositions in support of the said notice of motion is that this Court on 26th September 2013 gave an order of maintenance of status quo. The same was to remain in force until the judgment was delivered on 29th November, 2013. The said order was given in open court and delivered in presence of the lead counsel Mr. Richard Kwach, Mr. Manjit Billing both appearing for the appellant, and Mr. Rachuonyo for the respondent.

In blatant contravention of the said order, the property the subject matter of the appeal was sold before the judgment date and the discharge of charge was registered on 30th October, 2013. According to Mr. Billing, the conduct of the respondent through its directors and agents, officers or employees has brought the authority of this Court into disrepute, hence the application.

In his replying affidavit sworn on 29th April 2014, Mr. Munir Sheikh Ahmed the managing director of the respondent has deposed that, the property in question was actually sold as stated vide an agreement of sale dated 20th September, 2013. He has stated that as at the time the agreement of sale was entered into, there were no stay orders. His other argument is that he was not served with the status quo order, the subject of this notice of motion. It is his contention therefore that he cannot be said to have disobeyed any Court order and he cannot therefore he held in contempt of this Court's Orders.

When the application came up for hearing before us, Mr. Billing, learned counsel for the applicant amplified the deponements in his affidavit which we have referred to earlier. He submitted that when the order was issued, the respondent was ably represented by Mr. Rachuonyo who was in court. The respondent cannot therefore, feign ignorance as far as the order is concerned.

He called in aid this Court's Judgment in **Justus Kariuki Mate & Another vs Hon. Martin Nyaga Wambora & Another, Civil Appeal No. 24 of 2014 (Wambora case)** on the proposition that personal service of the order alleged to have been disobeyed is not mandatory. We shall revert to this point in more detail later as it forms the axis around which this appeal revolves. Mr. Billing's plea to us is to protect the dignity and integrity of this Court by finding the respondent in contempt and committing its managing director to civil jail for a period of six (6) months, or by imposing a fine and also committing him to civil jail.

On her part, Ms. Mc' Asila, learned counsel appearing for the respondent submitted that there was no personal service; that if there was no personal service then there must be proof that the respondent was aware of the order. Furthermore, in her view, there was no contempt committed as the sale agreement that initiated the sale process was signed six (6) days before the status quo orders were issued.

She submitted that there was ambiguity in the order in question that could have made compliance difficult. She was not nonetheless able to pinpoint the ambiguity in the order which was made up of a mere four words.

We have considered the application before us, the rival affidavits and submissions of both counsel. The fact that this Court issued the order in question is not disputed. The only issues for our determination are on service of the order; whether the order was clear, unambiguous and unequivocal; and finally whether there was compliance with the same.

If we find that there was contempt of the court order, then we shall proceed to mete out the sentence that will serve the ends of justice in the circumstances. We will now have a brief look at the law on contempt of Court as it currently stands. The law on Contempt of court is one of those vestiges of the laws we adopted from our colonisers, which quite unfortunately has yet to be amended with a view to bringing it in tandem with the constitution of Kenya 2010. This and any other such statutes need a total overhaul to align them to our endogenous current constitution.

For the time being however we must seek leverage in **Section 5 of the Judicature Act** which provides:

"Contempt of court

1. **The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and such power shall extend to upholding the authority and dignity of subordinate courts.**

2. **An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court."**

This provision subjects the proceedings of contempt of court in Kenya to the current law governing the High Court of Justice in England. The law governing the justices in England previously was subject to common law and **Order 52 of the Supreme Court Rules**. However, England enacted the **Contempt of Court Act of 1981** which supplements its common law contempt of court offences. The prevailing law of contempt in England is now found in the **Contempt of Court Act of 1981** and **Part 81** *of the* procedure in the **Civil Procedure (Amendment No. 2) Rules, 2012** that replaced **Order 52** of **the Supreme Court Rules** for contempt proceedings in the Supreme Court of England**.**

This Court has interpreted and applied the said law locally in many important decisions. In the recent Wambora case (supra), the court had opportunity to interpret and apply **Section 5 of the Judicature Act** and made the following observation:-

> ***"It is imperative in considering this issue to take into account the applicable law and the governing principles in contempt proceedings. As correctly pointed out by this Court in Christine Wangari Gachege -vs- Elizabeth Wanjiru Evans & 11 Others, - Civil Application No. 233 of 2007 the statutory basis of contempt of court in so far as the Court of Appeal and the High Court are concerned is Section 5 of the Judicature Act and Section 63(c) of the Civil Procedure Act. Of relevance to this case is 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.***
>
> ***(2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in exercise of the original criminal jurisdiction of the High Court." (Emphasis added)***

***Based on the foregoing provision, the applicable law in contempt proceedings in Kenya is the law applicable in the High Court of Justice in England at the time the* application for contempt was filed."**

Earlier on, this Court in ***Christine Wangari Gachege -vs- Elizabeth Wanjiru Evans & 11 Others,(supra)*** when dealing with the same issue concerning the applicability of English Law of contempt in our Courts had this to say***:***

***"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 Rules, 1999*. *Recently on 1 st October, 2012 the Civil Procedure (Amendment No. 2) Rules, 2012 came into force and part 81 thereof effectively replaced Order 52 of the Rules of the Supreme Court of England in its entirety." (Emphasis by underline)*

Consequently a careful consideration must be had to the provisions of the **Contempt of Court Act of 1981 Act** and **PART 81 of Civil Procedure (Amendment No. 2) Rules, 2012** with regard to contempt proceedings in Kenya. The Contempt of Court Act of 1981 of England is described as:

"An Act to amend the law relating to contempt of court and related matters."

The scope of the said **PART 81** as provided **under Rule 81.1** is limited to contempt of court, penal, contempt and disciplinary provisions of the County Courts Act 1984, and allows a person to be;

"(a) guilty of contempt of court; or

(b) punishable by virtue of any enactment as if that person had been guilty of contempt of the High Court, to pay a fine or to give security for good behaviour, as it applies in relation to an order of committal."

This also applies to the High Court and Court of Appeal.

PART 81 (Applications and Proceedings in Relation to Contempt of Court)

provides for four different natures or forms of violations under contempt of court, that is,

a. *Committal for "breach of a judgment, order or undertaking to do or abstain from doing an act"* provided for under Rule 81.4.

b. *Committal for "interference with the due administration of justice"* (applicable only in criminal proceedings) provided for under Rule 81.11.

c. Committal for contempt *"in the face of the court"*, provided for under Rule 81.16.

d. Committal for *"making false statement of truth or disclosure statement."* provided for under Rule 81.17.

Of the four forms of violations, only the contempt *for "breach of a judgment, order or undertaking to do or abstain from doing an act"* has an outlined procedure of service of the order and the penal notice under rule 81.5, 81.6, 81.7 and 81.8.

According to rule 81.9 all judgments or orders to do or not do an act may not be enforced in contempt proceedings unless a warning to the person required to do or not do the act in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of assets, has been prominently displayed, on the front of the copy of the judgment or order served. Consequently,

the court order and penal notice must be served simultaneously. The terms of the rule are set out below:

> **"81.9 (1) Subject to paragraph (2), a judgment or order to do or not do an act may not be enforced under rule 81.4 unless there is prominently displayed, on the front of the copy of the judgment or order served in accordance with this Section, a warning to the person required to do or not do the act in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of assets.**
>
> **(2) The following may be enforced under rule 81.4 notwithstanding that they do not contain the warning described in paragraph (1)—**
>
> a. **an undertaking to do or not do an act which is contained in a judgment or order; and**
>
> b. **an incoming protection measure.**
>
> (3) **In this rule, "incoming protection measure" has the meaning given to it in rule 74.34(1).**
>
> **(Paragraphs 2.1 to 2.4 of the Practice Direction supplementing this Part and form N117 contain provisions about penal notices and warnings in relation to undertakings.)"**

Rule 81.5 governs service of the judgment and or order which must carry a penal notice. Service must be carried out before the expiry of the period to perform an act. Rule 81.6 provides that service must be done personally *but this may be dispensed with by the court under rule 81.8.* The full text of Rule 81.5 provides as follows:-

> **"(1) Unless the court dispenses with service under rule 81.8, a judgment or order may not be enforced under rule 81.4 unless a copy of it has been served on the person required to do or not do the act in question, and in the case of a judgment or order requiring a person to do an act –**
>
> **the copy has been served before the end of the time fixed for doing the act, together with a copy of any order fixing that time;**
>
> **where the time for doing the act has been varied by a subsequent order or agreement under rule 2.11, a copy of that subsequent order or agreement has also been served;**
>
> **and**

c. **Where the judgment or order was made under rule 81.4(5), or was made pursuant to an earlier judgment or order requiring the act to be done, a copy of the earlier judgment or order has also been served.**

2. **Where the person referred to in paragraph (1) is a company or other corporation, a copy of the judgment or order must also be served on the respondent before the end of the time fixed for doing the act.**

3. **Copies of the judgment or order and any orders or agreements fixing or varying the time for doing an act must be served in accordance with rule 81.6 or 81.7, or in accordance with an order for alternative service made under rule 81.8(2)**

(b).”

As a general rule under rule 81.6 all service under this breach should be personal service unless the court dispenses with the personal service under rule 81.8. Rule 81.6 provides as follows.

> **“81.6 subject to rules 81.7 and 81.8, copies of judgments or orders and any orders or agreements fixing or varying the time for doing an act must be served personally.”**

Rule 81.8 subjects the dispensation of service of copies of a judgment or order to the issue of notice of the judgment and the courts discretion. It provides that:-

> **“(1) In the case of a judgment or order requiring a person not to do an act, the court may dispense with service of a copy of the judgment or order in accordance**
>
> **with rules 81.5 to 81.7 if it is satisfied that the person has had notice of it –**
>
> **by <u>being present</u> when the judgment or order was given or made; or by <u>being notified</u> of its terms by <u>telephone</u>, <u>email or</u> <u>otherwise</u>.**
>
> **(2) In the case of any judgment or order the court may –**
>
> **dispense with service under rules 81.5 to 81.7 if the court thinks it just to do so; or**
>
> b. **make an order in respect of service by an alternative method or at an alternative place.”**

The issue of dispensation of service under Rule 81.8 has been divided into two parts, that is,

i. *with regard to breach of a judgment or order undertaking to prohibit a person from doing an act on one part and*

ii. *the breach of any judgment or order, on the other part.*

As per rule 81.8, dispensation of service on the basis of notice or knowledge of the terms of an order will only apply to *a court judgment or order requiring a person not to do an act, that is, a prohibitory order.* The dispensation of service under rule 81.8

(1) is subject to whether the person can be said to have *had notice of the terms of the judgment or order.* The notice of the order is satisfied if the person or his agent can be said to either have been ***<u>present</u>*** when the judgment or order was given or made; or was ***<u>notified</u>*** of its terms ***by <u>telephone</u>***, ***<u>email or otherwise</u>***. In our view, ***'otherwise'*** would mean any other action that can be proved to have facilitated the person having come into knowledge of the terms of the judgment and/or order. This would definitely include a situation where a person is represented in court by counsel. Once the applicant has proved notice, the respondent bears an evidential burden in relation to *willfulness and mala fides disobedience.* This Court in the **Wambora** case (supra) affirmed the application of these requirements.

We now revisit the issue of service. Was there service of the order said to have been disobeyed on the respondent? There is no dispute that no formal order was extracted and personally served on the respondent and an affidavit of service filed to that effect.

In that respect, this case can be distinguished from **<u>Justus Kariuki Mate &</u> <u>Another vs Hon. Martin Wambora</u>** (**Wambora case**) *supra* cited by learned counsel for the applicant.

On the other hand however, this Court has slowly and gradually moved from the position that service of the order along with the penal notice must be personally served on a person before contempt can be proved. This is in line with the dispensations covered under 81.8 (1) (supra).

Kenya's growing jurisprudence right from the High court has reiterated that knowledge of a court order suffices to prove service and dispense with personal service for the purposes of contempt proceedings. For instance, **Lenaola J** in the case of **Basil Criticos Vs Attorney General and 8 Others [2012] eKLR** pronounced himself as follows:-

> ***"...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"***

This position has been affirmed by this Court in several other cases including the **Wambora case** (supra).

It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or notice of the existence of the order of the Court forbidding it. The threshold is quite high as it involves possible deprivation of a person's liberty. This standard has not changed since the old celebrated case of **Ex parte Langley** ***1879, 13***

Ch D. 110 (C.A), ***where Thesiger L.J*** *stated as follows. at p. 119:*

> ***"…the question in each case, and depending upon the particular circumstance of the case, must be, was there or was there not such a notice given to the person who is charged with contempt of Court that you can infer from the facts that he had notice in fact of the order which has been made? And, in a matter of this kind, bearing in mind that the liberty of the subject is to be affected, I think that those who assert that there was such a notice ought to prove it beyond reasonable doubt."***

What then amounts to "notice"?

Black's Law Dictionary, 9th Ed defines notice as follows:-

> ***"A person has notice of a fact or condition if that person-***
>
> ***Has actual knowledge of it;***
>
> ***Has received information about it; Has reason to know about it;***
>
> ***Knows about a related fact;***
>
> ***Is considered as having been able to ascertain it by checking an official filing or recording."***

Would the knowledge of the judgment or order by the advocate of the alleged contemnor suffice for contempt proceedings? We hold the view that it does. This is more so in a case such as this one where the advocate was in Court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in court on instructions of a party, then it behoves him/her to report back to the client all that transpired in court that has a bearing on the client's case.

This is the position in other jurisdictions within and outside the commonwealth.

In addressing the issue whether service of a judgment or order on the solicitor for the Ministers is sufficient knowledge of the order on their part to found liability in contempt; the Supreme Court of Canada in ***Bhatnager v. Canada (Minister of Employment and Immigration),*** ***[1990] 2 S.C.R. 217*** **at p. 226,** *LJ Sopinka,* held

that:-

> ***"In my opinion, a finding of knowledge on the part of the client may in some circumstances be inferred from the fact that the solicitor was informed. Indeed, in the ordinary case in which a party is involved in isolated pieces of litigation, the inference may readily be drawn. In the case of Minister's of the Crown who administer large departments and are involved in a multiplicity of proceedings, it would be extraordinary if orders were brought, routinely to their knowledge, in such a case there must be circumstances which reveal a special reason for bringing the order to the attention of the Minister." (Emphasis by underline)***

The Court went on to state that;

> ***"On the cases, there can be no doubt that the common law has always required personal service or actual personal knowledge of a court order as a pre-condition to liability in contempt....Knowledge is in most cases (including criminal cases) proved circumstantially, and in contempt cases inference of knowledge will always be available where facts capable of supporting the inference are proved.(See Avery v. Andrews(1882) 51LJ Ch. 414) (Emphasis by underline)***

In **United States v. Revie 834 F.2d 1198, 1203 (5th Cir. 1987)** the court held that the defendant had adequate notice of a show cause order because his attorney was on notice. Therefore, a client may be similarly "served" with a court's order by his attorney's communication of its contents and this communication is presumed if the attorney has knowledge of the order.

As stated earlier, in the matter before us, when the appeal came up for hearing, the respondent was ably represented by Mr Rachuonyo who opposed the appeal. Mr Rachuonyo was still in court when the appeal was concluded and final orders given by the Court. The Court reserved the appeal for judgment and ordered that the parties maintain the status quo pending delivery of the judgment.

From what transpired later as can be seen from the notice of motion before us, the respondent through its managing director Mr, Munir in total disregard of the Court order went ahead and transferred the suit property to a third party on 15th October which was during the pendency of the *status quo* order. His defence as contained in his replying affidavit is that the sale agreement was entered into on 20th September before the orders of status quo were issued and that the Bank was obligated to honour it. According to Ms Mc' Asila who appeared for the respondent herein, there was "an element" of ambiguity in the said order. She could not nonetheless explain which part of the order was ambiguous or misunderstood. It is in the circumstances important to define what status quo means and what it meant for purposes of this appeal. We are apt to mention however, that when that order was made, none of the parties in Court sought any clarification from us as to what the status quo entailed. The presumption therefore must be that everybody knew the meaning and import of that order. "Status quo'' in normal English parlance means the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events. We fail to see what can be ambiguous about that order. All it meant was that everything was to remain as it was as at the time that order was given. If there was any transaction of whatever nature that was going on in respect of the land in question, it had to freeze and await the discharging of the Court order. The agreement of sale may have been signed prior to that date, but once the court ordered maintenance of status quo, everything else had to wait. We credit Mr Rachuonyo to have understood that and that is why he did not seek an explanation or clarification from the Court as to the extent of the order in question. Indeed, even Ms Mc' Asila while on the one hand was saying that the order had some element of ambiguity, could not on the other hand say what that ambiguity was. Mr Rachuonyo should have properly advised his client to hold his horses and not rush to transfer the property to a third party before judgment was delivered. It is our view that there was nothing ambiguous about the said order and it should have been complied with. Given the outcome of the appeal, the respondent would not have lost anything by the compliance. And, even if the appeal had gone the other way, and notwithstanding whatever loses the respondent would have incurred' once the order of *status quo* was made, it just had to be obeyed.

Was the respondent in contempt of Court? Did Mr Munir, on behalf of National Bank of Kenya have a duty to comply with the court order?

It cannot be gainsaid that the duty to obey the law by all individuals and institutions is paramount in the maintenance of the rule of law, good order and the due administration of justice.

As stated by Romer, L.J. In ***Hadkinson –vs- Hadkinson, (1952) ALL ER 567,***

> ***"It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. Lord Cottenham, L.C., said in Chuck –vs- Cremer (1) (1 Coop. temp.Cott 342):***
>
> ***"A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it… It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid- whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it exists it must not be disobeyed."***

Further, this Court in ***Refrigeration and Kitchen Utensils Ltd. –vs- Gulabchand Popatlal Shah & Another, -Civil Application No.39 of 1990*** held,

> ***" … It is essential for the maintenance of the rule of law and good order that the authority and dignity of our courts is upheld at all times."***

The above pronouncements of law ring true now as they did over sixty years ago when they were made in Hadkinson's case. Unfortunately what we have now is persons both ordinary mortals and persons in authority treating Court orders with unbridled contempt with blatant impunity.

Was the respondent one such person? Unfortunately the answer to this question is in the affirmative. The order was made in presence of counsel for the respondent who as stated earlier must be presumed to have informed the respondent of the same. He went ahead and transferred the property before the due date of the judgment seemingly impatient to have this matter concluded once and for all. He acted in clear contempt of this Court. Government institutions, State officers, banks, and all and sundry are enjoined by law to comply with Court orders. We must deprecate in the strongest terms possible the worrying trend in this country where court orders are treated with tremendous contempt by persons and institutions which think wrongly of course, that they are above the law.

We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a court order or not. For as Theodore Roosevelt, the 26th President of the United States of America once said:-

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

The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and centre. This would amount to abdication of our sacrosanct duty bestowed on us by the Constitution. The dignity, and authority of the Court must be protected, and that is why those who flagrantly disobey them must be punished, lest they lead us all to a state of anarchy .We think we have said enough to send this important message across.

Before we conclude, we would like to state that contrary to the averment by the respondent herein that the application is bad in law for lack of leave to institute contempt of court proceedings, under the new Civil Procedure Rules of England (2012) which as stated earlier still apply in respect of contempt of court proceedings in this country, leave of the court before institution of an application such as this is no longer necessary. (See also this Court's ruling in **Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others)**. (Supra)

In this case, we find the respondent Mr Munir Sheikh Ahmed, the managing director and chief executive officer of the respondent, and on its behalf, in contempt of the court order dated 26th September 2013.

In the premises, we allow prayer 1 of the notice of motion dated 4th of December 2013 with costs to the applicant, but reserve sentence until the contemnor is heard on mitigation.

Dated and delivered at Nairobi this 18th day of February, 2015.

W. KARANJA

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JUDGE OF APPEAL

J. W. MWERA

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JUDGE OF APPEAL

P. M. MWILU

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR