

IN THE HIGH COURT FOR ZAMBIA

2016/HP/304

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

*(Civil Jurisdiction)*

BETWEEN:

TAHER AMMAR MOHAMMED KHALIL



1<sup>ST</sup> APPLICANT

CLEMENT WONANI

2<sup>ND</sup> APPLICANT

AND

SHUKRI ESIDIEG AHMED ELJAIDI

1<sup>ST</sup> ALLEGED CONTEMNOR

AHLAM HAMOUD

2<sup>ND</sup> ALLEGED CONTEMNOR

*Before The Honourable Mrs Justice P.C.M. Ngulube in Chambers*

For the Applicants:

Mr J Madaika, Mr Chibiliti of Messrs J.M.

Advocates

For the Alleged Contemnors:

Mr J. Banda of Messrs A.M. Wood and  
and Company and Mr Mwansa of Messrs  
Mambwe Siwila.

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## R U L I N G

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### *Cases Referred to:*

- 1. Zulu vs. The People (SCZ Judgment Number 7 of 1991)*
- 2. Mungalila Mapiko and Another vs. Chaande (2010/HP/690)*
- 3. Chiltern District Council vs. Keane (1985) 2 All ER 118*
- 4. Bank of Zambia vs. Aaron Chungu and Others ( SCZ Judgment Number 6 of 2008)*
- 5. Iberian Trust Limited vs. Founders Trust Investment Company Limited (1931) 2 KB 87*
- 6. Zulu vs. The People (1990-1992) ZR 62*

**7. *Balogh vs. Crown Court at Stalbans (1974) 3 All ER 238***

**8. *Jelson (Estates) Limited vs. Harvey (1984) 1 All ER 12***

On the 6<sup>th</sup> of May, 2016, the Applicants' Advocates filed an Ex-parte Notice of Motion for Committal for Contempt of Court pursuant to Order 52 Rule 2 of the Rules of the Supreme Court, 1999 Edition.

The Applicants' Advocates sought leave to commence Committal Proceedings against Shukri Esidieg Ahmed Eljaidi and Ahlam Hamoud, the Alleged Contemnors for their contempt of court for blatantly disobeying an order of this court by failing to adhere to the Ruling dated 27<sup>th</sup> April, 2016. The Applicants' Advocates stated that the Alleged Contemnors refused to allow the 1<sup>st</sup> and 2<sup>nd</sup> Applicants to represent the Libyan African Investment Company Zambia Limited and refused to grant them access to the registered office inspite the discharge of the Order of Interim Injunction. The Applicants' Advocates filed skeleton arguments in support of the Application and stated that the conduct of the 1<sup>st</sup> and 2<sup>nd</sup> Contemnors was deliberate as they were aware of the Ruling of the court and that their actions were calculated to impede the due course and administration of justice.

The Learned Advocates for the Applicants referred to Order 52 of the Rules of the Supreme Court, 1999 Edition and stated that the court has power to punish for contempt of court where it is established that an alleged contemnor has acted in contempt. They referred to the case of ***Zulu vs. The People***<sup>1</sup> where the Supreme Court stated that –

***“contempt of court includes any word spoken or act done calculated to bring a court into contempt or to lower its dignity or authority. Further, contempt of court may be shown either by language or manner.”***

The Learned Advocates for the Applicants submitted that the manner and subsequent acts of the 1<sup>st</sup> and 2<sup>nd</sup> Alleged Contemnors are brought into question as the court discharged the injunction. They contend that it is not justified for the Alleged Contemnors to continue denying the Applicants access to the premises and to deny them to represent the company in their respective capacities.

They submitted that the conduct of the alleged contemnors was meant to disregard the court’s authority, thus lowering its dignity and authority. The Learned Advocates for the Applicants referred to the case of ***Mungaila Mapiko and Another vs. Chaande***<sup>2</sup> where Matibini, J stated that –

***“Contempt of court constitutes conduct which tends to disobey an order requiring a person to do something or refrain from taking specific action and any conduct which impedes the administration of justice.”***

The Learned Advocates for the Applicants submitted that the Alleged Contemnors were directed to refrain from restraining the Applicants from acting in their respective capacities and from accessing the premises of the subject company. The Learned Advocates for the Applicants urged the court to ensure that the 1<sup>st</sup> and 2<sup>nd</sup> Alleged Contemnors desist from further interference with the due administration of justice by granting the Applicants

leave to commence committal proceedings against the Alleged Contemnors, as they had disobeyed the Ruling of the court dated 27<sup>th</sup> April, 2016 and were calculated at seriously impeding the administration of justice. On the 10<sup>th</sup> of May, 2016, this court granted the Applicants an Ex-parte Order for Leave to Apply for an Order of Committal for Contempt of Court.

On the 30<sup>th</sup> of May, 2016, the Advocates for the Alleged Contemnors filed a Notice of Motion to Raise a Preliminary Issue pursuant to Order 33, Rule 7 of the Rules of the Supreme Court, 1999 Edition and Order 30, Rules 15 and 17 of the High Court Rules.

The Alleged Contemnors gave notice, stating that they intended to raise the issue whether or not the contempt proceedings ought to be dismissed for failure to reveal prima facie contempt of court. The Learned Advocates for the Alleged Contemnors submitted in their skeleton arguments that contempt of court consists of

***“conduct which tends to disobey an order requiring a person to do something or refrain from taking specific action, and any conduct which impedes the administration of justice.”***

The Learned Advocates for the Alleged Contemnors submitted that although the court discharged the injunction, it did not make an additional order restraining the Plaintiffs from maintaining the status quo in the company. They further submitted that the court did not make an order directing the alleged Contemnors to restrain themselves from preventing the Applicants from acting in their purported respective capacities and from accessing the premises of the subject company. The

Learned Advocates for the Alleged Contemnors submitted that they cannot logically be held in contempt in terms of a series of factors in respect of which they sought protection and in respect of a claim which was not legally challenged at the material time the proceedings were commenced.

The 1<sup>st</sup> Alleged Contemnor filed an affidavit in support of Notice of Motion to Raise a Preliminary Issue and averred that the court did not make any order in its Ruling that the Alleged Contemnors have disobeyed.

The 1<sup>st</sup> Applicant filed an affidavit in opposition and stated that by granting leave to commence committal proceedings, the court properly addressed its mind to all the preliminary questions including that of prima facie contempt that the alleged contemnors wish to re-litigate. The 1<sup>st</sup> Applicant averred that the court having already granted leave for the contempt proceedings to commence, an argument on the merits can only be made within the proceedings after all the evidence has been presented to the court.

At the hearing of the application to raise a preliminary issue, Mr Mwansa, on behalf of the alleged contemnors submitted that he would rely on the affidavit in support deposed to by the 1<sup>st</sup> Alleged Contemnor which was filed into court on the 30<sup>th</sup> of May, 2016. He further submitted that he would rely on the skeleton arguments and stated that the Ruling was delivered on the 27<sup>th</sup> of April, 2016 discharged the ex-parte injunction which was granted. Mr Mwansa submitted that the court did not make an order in the Ruling and stated that the contempt proceedings

should not proceed since there has been no prima facie disobedience of an order of this court.

Mr Banda, on behalf of the Alleged Contemnors submitted that Order 52 of the Rules of the Supreme Court, 1999 Edition must strictly be complied with. He submitted that specifically, Order 52 Rule 4(3) requires that notice of motion to be specific and clear as to what it is the alleged contemnor had done or omitted to do which constitutes contempt of court.

Mr Banda referred to the case of ***Chiltern District Council vs. Keane***<sup>3</sup> and submitted that when an alleged contemnor appears, it must be pointed to him which order was breached, how it was breached and constitutes contempt of court. Mr Banda submitted that if the notice is not clear, then the application is defective and should be dismissed. He stated that the alleged contemnor must be pointed to specific portions of the court order which he is alleged to have breached. He stated that there must be a relation between the order and the notice of motion. He submitted that the notice of motion that was filed on the 11<sup>th</sup> of May, 2016 contains some detail but there is no relation between the Notice of Motion and the Ruling. The court did not order the Plaintiffs to allow the Defendants access to the registered office of Laico Zambia Limited.

Mr Banda submitted that contempt proceedings must be based on the disobedience of an actual order. He referred to the case of ***Bank of Zambia vs. Aaron Chungu and others***<sup>4</sup>, in which the court dismissed an application for committal for contempt of court, stating that the notice of motion was defective for lack of

specifics. He went on to refer to the case of ***Iberian Trust Limited vs. Founders Trust Investment Company Limited***<sup>5</sup> and stated that the Notice of Motion must be clear, as the court of appeal refused to read into contempt proceedings which were not specifically stated. Mr Banda submitted that there must be compliance with Order 45 Rule 5 of the Rules of the Supreme Court, 1999 Edition. He submitted that the Applicants must demonstrate that there was a penal notice and where there is none, it renders the proceedings fatal. Mr Banda prayed that the preliminary issue be upheld.

In reply, the Learned Counsel for the Applicants submitted that he would rely on the affidavit in opposition that was filed on 3<sup>rd</sup> May, 2016 and stated that the Alleged Contemnors Advocates want to relitigate the matter, as they are of the view that the court was wrong to grant leave. The Learned Counsel for the Applicants submitted that the entire argument has no merit and urged the court to dismiss the application.

Mr Banda submitted in reply that it is not strange for a court to dismiss a matter and not proceed to hear it even where leave has been granted. He submitted that the Notice for Motion is defective and prayed that the court upholds the Preliminary Issue that was raised and presented before it.

I have carefully considered the issues raised by the Advocates for the Alleged Contemnors as well as those raised by the Applicants' Advocates, the authorities cited and I am indebted to all Counsel for their spirited arguments. Order 52 Rule 1 Sub Rule 1 states that –

***“The power of the High Court to punish for contempt of Court may be exercised by an Order of Committal.”***

The critical and starting point in contempt proceedings is whether there exists a court order which is the subject matter of the complaint concerning non-compliance.

In the case of ***Zulu vs. The People***<sup>6</sup> (1990-1992) Z.R 62, the Supreme Court approved a passage by Lord Denning in the case of ***Balogh vs. Crown Court at St Albans***<sup>7</sup> as follows –

***“The power of summary punishment is a great power, but it is a necessary power. It is given so as to maintain the dignity and authority of the Judge and to ensure a fair trial.”***

It is not in dispute that this court discharged an Ex-Parte Order of Injunction in a Ruling that was delivered on the 27<sup>th</sup> April, 2016. It is also not in dispute that on the 6<sup>th</sup> of May, 2016, the Applicants filed an Ex-Parte Notice of Motion to apply for an Order of committal for contempt of court. On the 10<sup>th</sup> of May, 2016, this court granted the Applicants’ Advocates an Ex-parte order for leave to apply for an order for committal for contempt of court.

In the case of ***Chiltern District Council vs. Keane***<sup>3</sup>, Sir Donaldson stated that –

***“...the person alleged to be in contempt shall know with sufficient particularity to enable him defend himself what exactly he is said to have done or omitted to do which constitutes a breach of court.”***



I have perused the Notice Containing the Application for the Ex parte Notice for Leave that was filed by the Applicants' Advocates. I have also perused the ruling and do not find any order in my Ruling of the 27<sup>th</sup> of April, 2016 which the Alleged Contemnors have expressly disobeyed suffice to say that this court discharged the Ex-parte Order of Injunction but did not make any other specific order which would necessitate citing the Alleged Contemnors for Contempt. The Notice that was filed by the Learned Advocates for the Applicants did not specify with sufficient particularity the acts that constituted contempt of court. In the case of ***Jelson (Estates) Limited vs. Harvey***<sup>8</sup> the Motion merely alleged that the court order had been broken and gave no particular reasons. When it came up for hearing, the Judge dismissed the motion as it did not comply with Order 52 Rule 4.

Although leave to apply for an order of committal for contempt of court was granted by this court, I do not see what the Alleged Contemnors are alleged to have disobeyed in the Ruling that discharged the Ex-parte order of Injunction. The Leave that was granted on the 10<sup>th</sup> of May, 2016 is accordingly discharged. The preliminary issue that was raised by the Learned Advocates for the Alleged Contemnors succeeds and I dismiss the Applicants' Application to commence committal proceedings for contempt of

court for lack of merit. I will make no order for costs. Leave to appeal is granted.

***Dated this 3<sup>rd</sup> day of August, 2016***

A handwritten signature in black ink, appearing to be 'P.C.M. Ngulube', written in a cursive style.

**P.C.M. NGULUBE  
HIGH COURT JUDGE**