

IN THE HIGH COURT FOR ZAMBIA

2011/HPC/0021

AT THE COMMERCIAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)



**BETWEEN:**

**OMAS GENERAL DEALERS LIMITED**

**1<sup>ST</sup> APPLICANT**

**MAYDAH FARMS LIMITED (FORMERLY NKANGA FARMS LIMITED)**

**2<sup>ND</sup> APPLICANT**

**FOUR "A" TRUCKLINES AND DISTRIBUTORS LIMITED**

**3<sup>RD</sup> APPLICANT**

**AND**

**GODFREY BWALYA**

**CONTEMNOR**

**Before the Honourable Mr. Justice W.S. Mweemba in Chambers at Lusaka**

*For the Applicant:*

*Dr O.M. M. Banda- Messrs OMM Banda & Company.*

*For the Respondent:*

*Mr M. J. Katolo- Messrs Milner & Paul Legal Practitioners.*

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**RULING**

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**LEGISLATION REFERRED TO:**

1. *Order 52 (3) of the Rules of the Supreme Court of England, (White Book) 1999 Edition.*
2. *Halsbury's Laws of England 4<sup>th</sup> Edition Volume 9 Paragraph 59.*

**CASES REFERRED TO:**

1. *Christopher James Thorne v Christopher Mulenga & 2 Ors -2008/HPC/0841- 2010 ZLR 221 Vol 1.*
2. *Attorney General & Times Newspaper Limited (1974) A.C 273.*
3. *Moonde Jane Mungaila & John Muchabi v Victor Chaande (2010) Vol. 1 ZLR 397.*
4. *W. K. Banda v Merchant Printer Limited IRC Complaint No. 27 of 1984/1986.*
5. *Rev Tegerepayi Gusta and Elias Nyati v the People (1988- 89) ZR 78 SC.*

6. *Re Bramblevale Ltd (1969) 1 All ER 1062.*

7. *Elias Tembo v Lusaka City Council 2013/ HP/0677.*

**OTHER WORKS REFERRED:**

1. *Stuart Siame, A Practical Approach to Civil Procedure. (Oxford University Press, 2005).*

2. *Black's Law Dictionary 9<sup>th</sup> Edition.*

This is a Ruling on a Notice of Motion for a Committal Order for Interfering with Proceedings pursuant to **Order 52 Rule 3 of the Rules of the Supreme Court of England, (White Book) 1999 Edition.**

The Notice of Motion was supported by an Affidavit sworn by Said Hersi Omar the Director of the Applicants. He deposed that this litigation commenced by the Contemnor and in his Amended Originating Process filed on 12<sup>th</sup> December, 2012 is claiming for a declaration that the purported transfer of his 37.5% shares held by him in the 2<sup>nd</sup> Applicant to the 3<sup>rd</sup> Applicant or any other person without his consent was null and void ab initio and an attempt to defraud him of his shares.

That the Contemnor is further claiming for an Order directing the 2<sup>nd</sup> Applicant and its agents to return the ownership of the said 37.5% shares held by him in the 2<sup>nd</sup> Applicant to him.

That from the reliefs mentioned above the Contemnor is seeking it is clear that he is challenging the transfer of his purported shares in the 2<sup>nd</sup> Applicant to the 3<sup>rd</sup> Applicant and he strongly believed that the Contemnor is not a shareholder of the 2<sup>nd</sup> Applicant, therefore he lacked jurisdiction to deal with the affairs of the 2<sup>nd</sup> Applicant.

That the Contemnor is fully aware of this litigation and before this Court hears and determines the dispute, the Contemnor declared himself a winner and he decided to sell the 2<sup>nd</sup> Applicant's Farm No. 10626, Kasama without following the law and procedure relating to disposal of Company assets to

Northern Coffee Corporation Limited at the price of K800,000.00 as per exhibits "SHO 1 and 2" of the Affidavit filed on 22<sup>nd</sup> June, 2015.

That he strongly believes that the Contemnor was dealing with the 2<sup>nd</sup> Applicant's asset in his purported capacity as shareholder of the 2<sup>nd</sup> Applicant and he further strongly believes that no shareholder has any right to any property owned by the Company.

That if their application is not granted the Contemnor would continue interfering with the proceedings of this Court and to underrate the jurisdiction of this Court to determine this litigation.

That if the Contemnor is not committed to prison he strongly believes that it would set a bad precedent whereby litigants would be interfering with Court proceedings and underrating the jurisdiction of the Courts with impunity.

There is also an Affidavit in Opposition filed into Court on 7<sup>th</sup> August, 2015 and deposed to by Godfrey Bwalya the Alleged Contemnor herein.

Mr Bwalya deposed that on Wednesday 5<sup>th</sup> August 2015 he was served with Court Process issued out of the High Court of Zambia Principal Registry at Lusaka.

That he commenced this action against the Defendant on 13<sup>th</sup> January, 2011 and reasonably believes that the only reason he commenced it is because he knew that the Courts in Zambia were established to resolve disputes between parties.

That he is equally aware that while matters were pending in Court there is nothing that prevented parties from talking to each other or through their respective Advocates to try and resolve the matter amicably.

That in that regard, when he got an offer from Northern Coffee Corporation Limited on 2<sup>nd</sup> April, 2015 he quickly brought the matter to the attention of his Advocates and instructed them to write to the Defendants Advocates to ask them whether they would be willing to accept that they sell the farm in



question and share the proceeds according to the percentage of shareholding.

That his Advocates did as he had instructed and asked whether their client would accept that the farm be sold. He exhibited "GB1" a true copy of the said letter as proof.

That before this letter was written his Advocate Mr Katolo spoke to Dr Banda personally and the latter advised that he write the letter and deliver it to his office as he was out of Jurisdiction.

That on 14<sup>th</sup> April, 2015 Messrs OMM Banda & Company replied to the letter threatening contempt proceedings in total disregard of his intention to reach an amicable settlement. Exhibit "GB2" was a true copy of the said letter of response.

That on 17<sup>th</sup> April, 2015 his lawyers wrote back to Messrs OMM Banda & Company expressing deep concern at their failure to appreciate the Courtesy of fellow counsel and their complete twist of a well- intended effort to resolve the matter amicably. Exhibit "GB3" was a copy of the said letter.

That if he had a deliberate intention to interfere with any proceedings of Court he would not have instructed his Advocates to communicate with Messrs OMM Banda & Co proposing an amicable settlement.

That from his standpoint he was not aware of any law that forbade parties from attempting an amicable settlement of any matter, nor of any Court Order he had disobeyed that would warrant citing him for contempt and that there had been no demonstration by the Applicants of how he had undermined the integrity of this Court.

That he had no intentions of interfering with the matters in Court and had not done so from 2011 when this matter commenced.

There is also an Affidavit in Reply sworn by Said Hersi Omar aforesaid. He deposed that exhibit "SHO1" of the Applicant's Affidavit of 22<sup>nd</sup> June 2015

shows that the Contemnor's Advocates only contacted the Applicant's Advocates after the Contemnor had accepted the offer.

That in view of this the Contemnor acted illegally, unlawfully and in bad faith. That the Applicant's Advocates upon receipt of the letter from the Contemnor's Advocates sought the instructions of the Applicant and as a law firm Messrs OMM Banda and Co. just communicated their decision to the Contemnor's advocates therefore it was unfair to accuse the Applicant's Advocates over the Applicant's decision to reject the proposal.

That this matter had come up for hearing on 30<sup>th</sup> April, 2013 to allow the parties to explore possible *ex-curia* settlement and the position of the Applicant was that the matter be determined by the Court but their Advocates proposed that a meeting be held between the Advocates only to look at the evidence of the parties which would have helped them to advise the Applicants on *ex-curia* settlement but the proposal never had any response. That copies of letters marked "SHO 2 and 3" dated 2<sup>nd</sup> May, 2013 and 20<sup>th</sup> June, 2013 were exhibited.

Moreover that while it was true that no law forbade parties from attempting an amicable settlement in this matter the Contemnor made a decision before the parties attempted to reach an agreement and if the Contemnor did not commit any offence in this action, the deponent was at a loss to understand the reason of his Apology to this Court.

That he had been to Kasama several times and was aware that the Contemnor had been taking the issue of the 2<sup>nd</sup> Applicant's Farm to the chief and various Government wings, offices and departments while this matter was still in Court thus there was a possibility that if the application was not granted then the Contemnor would continue to underrate the jurisdiction of this Court.

That the property in dispute was that of the 2<sup>nd</sup> Applicant a Limited Company and the Contemnor in his Affidavit in Opposition had not shown any evidence that he followed the law relating to disposal of company assets

and had totally failed to prove that his action had the blessings of the 2<sup>nd</sup> Applicant.

There is also a further Affidavit in Reply filed into Court on 18<sup>th</sup> September, 2015. It was also deposed to by Saidi Hersi Omar aforesaid.

He deposed that this matter was commenced by the Contemnor on 13<sup>th</sup> January, 2011 and while the matter was still pending before Court the Contemnor approached Fidelis M. Chishoma over the Applicant's 2<sup>nd</sup> farm who wrote the letter dated 25<sup>th</sup> March, 2012 in his purported capacity as Lukulu Ward area Councillor to the 1<sup>st</sup> Applicant's Managing Director addressing the 2<sup>nd</sup> Applicant's Board of Directors as fake investors and that the said letter was copied to various offices. That exhibit "SHO1" showed this.

That the Applicant's Advocates in their letter dated 21<sup>st</sup> May, 2012 to the said Fidelis M. Chishoma brought this litigation to his attention and informed him that the issue of the 2<sup>nd</sup> Applicant's farm was a subject of this litigation. Exhibit "SHO2" was a true copy of this letter.

It is also his deposition that the Contemnor wilfully and deliberately failed to advise the said Fidelis M. Chishoma to let the Court adjudicate upon the Applicants farm and that when he wrote the letter dated 28<sup>th</sup> June, 2012 he never showed any remorse despite being aware of this litigation as shown by exhibit "SHO3".

Moreover that he strongly believed that the Contemnor encouraged the said Fidelis M. Chishoma to involve himself in this matter.

That from the exhibits marked SHO 1 and 3 it was clear that the Contemnor had been underrating the jurisdiction of this Court to adjudicate upon this matter and had been interfering with the proceedings of this Court for a long time or sometime and he strongly believed that he did not deserve any leniency.



Counsel for the Applicant filed in Skeleton Arguments as well as written submissions in support of the application on 30<sup>th</sup> July, 2015 as well as 14<sup>th</sup> June, 2017.

Counsel submitted that this litigation was commenced by the Contemnor in his Amended originating process of 12<sup>th</sup> December, 2012 where he claimed the following reliefs:

1. An Order declaring the purported transfer of the Plaintiff's 37.5% shares held by him in Nkanga farms Limited (now the 2<sup>nd</sup> Defendant) to Four "A" truck Lines and Distributors Limited or any other person without his consent null and void ab initio and an attempt to defraud the Plaintiff of his shares.
2. An order directing the 2<sup>nd</sup> Defendant and its agents to return the ownership of the 37.5 % shares held by the Plaintiff in the 2<sup>nd</sup> Defendant to the Plaintiff.

According to Counsel the Contemnor's claims quoted herein were challenging his purported removal from the 2<sup>nd</sup> Applicant.

That this matter was still pending and the Contemnor was fully aware of its status as per exhibit "SHO2" of the Affidavit filed on 22<sup>nd</sup> June, 2015 and the Contemnor despite being aware of the status of this matter accepted the offer to purchase the 2<sup>nd</sup> Applicant's Farm No. 10626, Kasama without the consent of the Applicants especially the 2<sup>nd</sup> Applicant from Northern Coffee Limited as per exhibit "SHO1" of the Affidavit of 22<sup>nd</sup> June, 2015.

It was Counsel's submission that since the Contemnor dealt with the Asset in his purported capacity as shareholder it was their contention that a shareholder had no legal right to the property owned by the Company which was a separate legal entity.

Further that this submission and argument was supported by the decision of **CHRISTOPHER JAMES THORNE V CHRISTOPHER MULENGA & 2 ORS (1)** where it was held that:

**“The Applicant’s right to reflect is not clear. No shareholder has any legal or equitable interest. He is entitled to a share in the profits while the company continues to carry on business and a share in the distribution of the surplus when the Company is wound up.”**

Counsel further submitted that exhibit “*SHO1*” clearly reveals that the Contemnor interfered with the proceedings and is therefore liable to be committed to prison for interference of Court proceedings.

He relied on the case of **ATTORNEY GENERAL & TIMES NEWSPAPER LIMITED (2)** in which it was held that:

**“In an ordered community, Courts are established for the pacific settlement of disputes and for the maintenance of law and order. In the general interest of the community it is imperative that the authority of the Courts should not be imperilled and that recourse to them should not be subject to unjustifiable interference. When such unjustifiable interference is suppressed, it is not because those charged with the responsibilities of administering justice are concerned for their dignity; it is because the very structure of ordered life is at risk if the recognised Courts of the land are so flouted and the authority wanes and is supplanted”**

For a definition of contempt of Court Counsel cited the case of **MOONDE JANE MUNGAILA & JOHN MUCHABI V VICTOR CHAANDE (3)** where it was held by P. Matibini J (as he then was) that:

**“3. Contempt jurisdiction includes conduct which tends to disobey an order requiring a person to take or refrain from taking specified action; assisting another to breach such an Order; and generally any conduct which impedes the administration of justice.**



**10. It is in the general interest of the administration of justice that litigants and Counsel are candid with the Courts of Law.”**

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**“Thus in the essence contempt of Court consists of interfering with the administration of justice.”**

He also relied on the learned author Stuart Siame’s Book, **A Practical Approach to Civil Procedure Oxford University Press, 2005 at page 487** where it was stated that:

**“Contempt of Court can take many forms. However, the most common are:**

- (a) Disobedience by the contemnor of an order requiring him or her to take or refrain from taking specified action;**
- (b) Assisting another to breach an order; and**
- (c) Taking action which impedes, or interfere with the course of justice.”**

Counsel also added that it was their submission and argument that from exhibit “*SHO1*” of the Affidavit of 22<sup>nd</sup> June, 2015 it was clear that the Contemnor was in contempt of Court and if this Court allowed these proceedings to be interfered with, with impunity it would set a very bad precedent whereby litigants would interfere with Court proceedings at will.

He also relied on **W. K. BANDA V MERCHANT PRINTER LIMITED (4)** where it was held that:

**“We are indebted to him when he says that unless this Court intervenes not only will injustice be done to his Client but it will set a very bad precedent whereby judgments by this Court will be ignored with impunity to those who lose cases.”**

He lastly stated that from exhibit “*SHO1*” of the Affidavit in Reply filed on 22<sup>nd</sup> June, 2015 it is an undisputed fact that the Contemnor is in Contempt of Court and under **Order 52 Rule 3 of the Rules of the Supreme Court of**

**England (White Book) 1999 Edition** he urged this Court to grant the application.

Counsel for the Alleged Contemnor also filed Submissions to oppose the application on 11<sup>th</sup> August, 2017.

He submitted that the alleged Contemnor had no intentions of interfering with matters in Court and he had not done so since 2011 when this action was commenced. It was also stated that he was saddened that a well-intended effort on his part to attempt amicable settlement of the dispute had been turned into a Contempt matter.

That he wished to add that the role of the Courts in encouraging amicable settlement of disputes among parties could not be over emphasised.

That he urged the Court to take judicial Notice of the long standing approach of the legal profession and of the Courts to encourage parties involved in civil disputes to resolve them amicably.

According to Counsel for the alleged Contemnor, no issue arises when one party to a dispute proposes to resolve the matter amicably.

In addition that Exhibit "SHO2" in the Applicant's Affidavit in support of *Ex-parte* Summons for leave to commence this action is a letter from his Advocates which at paragraph 2 states as follows:

**"we write to advise that our client has instructed us to propose an amicable settlement herein by way of selling Farm No. 10626 Kasama otherwise known as Nkanga Farms and sharing the proceeds equally less Property Transfer Tax and Ground Rent."**

It is submitted that this letter shows that the Alleged Contemnor had no intention to undermine the Court proceedings but requested the involvement of the Applicants in reaching an amicable settlement and that could not by any stretch of imagination amount to Contempt of Court.

Moreover that the learned authors of **Black's Law Dictionary 9<sup>th</sup> Edition** described '*contempt*' as follows:

**“Contempt is a disregard of, or disobedience to the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behaviour or insolent language, in its presence or near there so as to disturb the proceedings or to impair the respect due to such a body.”**

It was also stated that at the hearing of the Committal proceedings the Applicant’s only witness conceded in cross examination that there was nothing irregular about one party to a suite requesting another for an amicable settlement of the dispute.

That the Applicant failed to prove which Order of the Court the alleged Contemnor breached to warrant a sanction by way of an order of committal.

That Mr Saidi Hersi Omar lied at one point during cross examination that there was a judgment of Court that the alleged Contemnor disobeyed and it was only after he was prodded to produce it that he conceded that there was no such order.

That the learned authors of the **Halsbury’s Laws of England 4<sup>th</sup> Edition Volume 9 Paragraph 59** had the following to say on the power of Court to punish for contempt.

**“The power of Court to order Committal for civil contempt is a power to be exercised with great care. The Court will only punish disobedience to an order of Court, or non compliance with an undertaking, if satisfied that the terms of the order or undertaking were clear and unambiguous that the Defendant had proper notice of the terms and that a breach of the order or undertaking had been proved beyond reasonable doubt.”**

It was also submitted that in the case of **REV TEGEREPAYI GUSTA AND ELIAS NYATI V THE PEOPLE (5)** it was stated at page 80 that:

**“In civil cases where there was disobedience of an order of the Court for instance a refusal to comply with an order of**



**injunction, it was usual for the other party to apply for an order of committal”**

That from the above authorities it was clear that in civil Contempt, the condition precedent to move for committal was proof beyond reasonable doubt of disobedience to an order of court.

Counsel also drew the Court’s attention to the case of **RE BAMBLEVALE LTD (6)** where the House of Lords held as follows:

**“The Appellant would be released because Contempt of Court was an offence of a criminal character and must be proved with such strictness as was consistent with the gravity of the offence charged and the Court could not be satisfied beyond reasonable doubt that the Appellant still had the books in November, 1986.”**

It is contended that similarly in this case, the Applicants have failed to produce proof beyond reasonable doubt that the Plaintiff has disobeyed any order of this Court or conducted himself in a way that brought this Court into disrepute.

Counsel urged the Court to dismiss the contempt application for being an abuse of Court process with costs to be taxed in default of Agreement.

He submitted strongly that the application for committal was misconceived and should be dismissed for being an abuse of Court process.

On the date of hearing on 30<sup>th</sup> May, 2017 Mr Saidi Hersi Omar the Director and shareholder in the Applicant Companies gave viva voce evidence in the contempt proceedings. He stated that he had come before Court to testify about an attempt to sell a farm in Kasama.

That there was another attempt by the alleged Contemnor to contact the chief to intimidate and sell the farm when there was no agreement or meeting of the Company.

That the Chief even threatened to repossess the land but he (*Saidi Hersi Omar*) explained to him that the Farm had a Title deed and that the matter was in Court.

During Cross Examination, the witness stated that parties could attempt amicable settlement when a matter was in Court. That there was no judgment yet and that what was there was an attempted sale.

Further that there was no proof before Court that the alleged contemnor contacted the chief.

In Re-Examination he stated that he spoke with the chief who informed him that he had spoken to the alleged contemnor and that the chief threatened to repossess the land if the parties did not arrive at any agreement.

The alleged Contemnor Mr Godfrey Bwalya a farmer of Kasama told the Court that his Affidavit in Opposition should be considered as his evidence in chief.

That all documentation for Nkanga Farms (2<sup>nd</sup> Applicant) was being kept by the 1<sup>st</sup> Applicant who had 5% shares in the Farm.

That as for exhibit "SHO1" he signed the agreement on the understanding that the same would only take place upon approval by all the shareholders.

In Cross-Examination he testified that he did not brief the other shareholders prior to signing the offer letter which he accepted.

In Re-Examination he stated that the names Nkanga Farms Limited appeared because the Title Deeds were in that name and that he was a major shareholder in Nkanga Farms Limited.

He also added that he did not brief the other shareholders because he wanted the lawyers to be involved.

I have considered the Affidavit evidence and the *viva voce* evidence of the parties as well as the Skeleton Arguments of both learned Counsel for the Applicant and the Respondent.

The question for this Court's determination in my view is whether the actions of the Alleged Contemnor in the way he signed the letter of offer by Northern Coffee Corporation Limited to purchase the 2<sup>nd</sup> Applicant's farm would warrant this Court to make an Order for committal against him.

This matter was commenced under **Order 52 (3) of the Rules of the Supreme Court of England (White Book) 1999 Edition** by the Applicant. Counsel for the Applicant submitted that this matter was commenced in 2011 by the alleged Contemnor and that on 2<sup>nd</sup> April, 2015 as shown by exhibit "SHO1" he accepted an offer to sell the 2<sup>nd</sup> Applicant's Farm without the consent of all relevant parties whilst Court proceedings were underway.

According to Counsel, doing so amounted to interference of Court proceedings. Moreover, that the alleged Contemnor was merely a shareholder in the 2<sup>nd</sup> Applicant and had no right to sell the property of the 2<sup>nd</sup> Applicant in that capacity.

Counsel for the Alleged Contemnor argued in response that the position of his client was that he was merely trying to encourage the parties to the dispute to arrive at an amicable settlement of the matter.

That he was concerned that his good intention could be misconstrued as amounting to contempt of Court.

Moreover that no law disallowed parties from attempting to arrive at an amicable settlement of disputes.

It is trite law that before a Court makes any determination in contempt proceedings it has to make a finding that there was a wilful disregard of a Court order or disrespect for the authority of a court of law by the Alleged Contemnor.

Further, in the case of **MOONDE MUNGAILA- MUPIKO (SUING ON BEHALF OF THE TRADITIONAL COUNCIL OF THE MUNGAILA ROYAL ESTABLISHMENT) JOHN MUCHABI V VICTOR CHANDE (3)** P. Matibini J (as he then was) held *inter alia* that:



**“Proceedings for contempt are essentially punitive in character and the purpose is to secure compliance with court orders.”**

Whilst in the case of *ELIAS TEMBO V LUSAKA CITY COUNCIL (7)* it was stated that:

**“Contempt proceedings are very serious in nature and should not be lightly employed....”**

Counsel for the alleged Contemnor also brought out an important aspect to this from the **Halsbury’s Laws of England 4<sup>th</sup> Edition Volume 9 Paragraph 59** where the following is stated on the power of Court to punish for contempt.

**“The power of Court to order Committal for civil contempt is a power to be exercised with great care. The Court will only punish disobedience to an order of Court, or non compliance with an undertaking, if satisfied that the terms of the order or undertaking were clear and unambiguous that the Defendant had proper notice of the terms and that a breach of the order or undertaking had been proved beyond reasonable doubt.”**

Counsel also cited the case of **REV TEGEREPAYI GUSTA AND ELIAS NYATI V THE PEOPLE (5)** where it was stated by the Supreme Court at page 80 that:

**“In civil cases where there was disobedience of an order of the Court; for instance a refusal to comply with an order of injunction, it is usual for the other party to apply for an order of committal”,...**

In my view it is clear from the above authorities and as was alluded to by learned Counsel for the alleged Contemnor that in civil Contempt, the condition precedent to move for committal was proof beyond reasonable doubt of disobedience to an order of court.

Contempt of Court quite apart from the aspect of the authority and dignity of the Court also ultimately deals with the liberty of the individual. The consequences of disobeying Court Orders or of interfering with the administration of justice are very serious. It is for this reason that the Court must exercise very great care when dealing with applications relating to contempt of Court. It is a general principle that process by way of contempt should not be lightly employed.

I note that exhibit "SHOI" to the Applicant's Affidavit in Support of this application was an Offer made between Northern Coffee Corporation Limited (Northern Coffee) and Nkanga Farms Limited (the 2<sup>nd</sup> Applicant herein) whereby subject to contract Northern Coffee was to purchase Farm No. 10626 Kasama.

This offer was signed by the alleged Contemnor Mr Godfrey K. Bwalya and is the main reason why this application was made by the Applicant who contended that as a shareholder, the Alleged Contemnor had no legal right to sell the property of the 2<sup>nd</sup> Applicant, let alone without a decision of all the other relevant members.

According to the alleged Contemnor his signature of the said offer did not amount to an acceptance but that he had every intention to propose an amicable solution to the dispute between the parties involved.

During cross examination the Alleged Contemnor accepted that he did not brief the other shareholders prior to signing the offer letter because he wanted their lawyers to be involved.

An important issue for this Court to resolve is whether the Alleged Contemnor's acceptance of the offer by Northern Coffee to purchase the 2<sup>nd</sup> Applicant's farm was an act of contempt.

While this was not a proper thing for the alleged contemnor to do without adhering to the proper procedures of a company in the disposal of property, the law already alluded to above has also shown that apart from the fact that the burden of proof in contempt proceedings is beyond reasonable

doubt, there should also be an Order of Court that a person wilfully disregards or that one should disrespect the authority of a Court of law before such an order is granted.

In this case there is no such Court Order that was defied and I am also of the view that the Alleged Contemnor had no intention of undermining the Court Proceedings when on 2<sup>nd</sup> April, 2015 he signed the Offer letter dated 2<sup>nd</sup> April, 2015 from Northern Coffee offering to purchase Farm No. 10626 Kasama. The letter dated 13<sup>th</sup> April, 2015 from Messrs Milner Katolo & Associates the Alleged Contemnor's Advocates to Messrs OMM Banda & Company, the Applicant's Advocates makes it clear that the Alleged Contemnor had no intention to undermine the Court Proceedings but was requesting the involvement of the Applicants in reaching an amicable settlement.

In this case it is my considered view that the actions of the Alleged Contemnor did not go to the root of the matter in dispute nor did they go against a specific Court order for me to make a finding that the burden required in this matter has been satisfied. In my view the Applicants have not demonstrated how the Alleged Contemnor has undermined the integrity of the Court.

In view of the foregoing, I do not think that this is a proper case in which to grant an Order for Committal. I must refuse the application for an Order for committal.

The Application is dismissed.

In all the circumstances, I shall make no order as to costs.

Delivered in Chambers at Lusaka this 30<sup>th</sup> day of October, 2017.



.....  
**WILLIAM S. MWEEMBA**  
**HIGH COURT JUDGE**