

**IN THE HIGH COURT OF TANZANIA**  
**COMMERCIAL DIVISION**  
**AT DARES SALAAM**  
**MISCELLANEOUS COMMERCIAL APPLICATION NO. 185 OF 2020**  
**(Arising from Commercial Case No. 60 of 2019)**

<b>GODREJ CONSUMER PRODUCTS LIMITED .....</b>	<b>APPLICANT</b>
<b>VERSUS</b>	
<b>TARGET INTERNATIONAL (T) LIMITED .....</b>	<b>RESPONDENT</b>

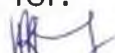
**RULING**

**K. T. R. Mteule, J**

**8/12/2021 & 28/1/2022**

This Application is filed under **Section 95 and Order XXXVII Rules 2(2) & (6) of the Civil Procedure Code, Cap 33 of the RE 2019 (CPC)** praying for the following: -

1. That the Honourable Court may be pleased to issue an order for arrest and detention as civil prisoners the Respondent's Directors, namely **Aliraza Husseinali Bhimji** and **Shaneabbas Jessa**, for a term not exceeding six months, for disobeying the Court order dated 11 August 2020 rendered in **Miscellaneous Commercial Application No. 54 of 2019**;
2. That this Honourable Court be pleased to issue an order for attachment of the Counterfeit HIT products manufactured by the Respondent, and which are in the Respondent's possession.
3. Any other or further relief that this Honourable Court may deem it fit to grant.
4. The costs of this application be provided for.



The Applicant herein is the Plaintiff in **Commercial Case No. 60 Of 2019** pending before this Court seeking, among other things, a permanent injunction restraining the Defendant from selling, producing, dealing in or otherwise offering for sale, promoting or advertising any mosquito and insect repelling products in the Tanzanian market which are confusingly similar to the Plaintiff's products. Along with this suit, the Applicant filed **Miscellaneous Commercial Application No. 54 of 2019** seeking for temporary injunction to restrain the Defendant from performing what was sought in **Commercial Case No. 60 Of 2019** pending its final determination. The orders sought in **Commercial Application No. 54 of 2019 were granted**. The Applicant brought this application alleging Respondent's disobedience to that court orders and seeking for her director's arrest and detention for such disobedience.

The affidavit supporting the Application is deposed by Faraji Taratibu who is an Advocate from Malosha and Msola advocates. He stated that in **Miscellaneous Commercial Application No. 54 of 2019**, this Court on 11 August 2020, ordered a temporary injunction restraining the Respondent or its agents or servants from manufacturing, selling, importing or exporting or commercially dealing in any other manner with the counterfeit mosquito and repellent spray bearing the HIT Trade Mark in the Tanzanian market pending the determination of **Commercial case No. 60 of 2019**.

According to the affidavit, the applicant instructed the deponent's laws firm to investigate as to whether the Respondent is complying with the Court Order and if not necessary steps to be taken.

It is deposed further that the deponent, Mr. Taratibu, conducted the investigation for seven days between 26<sup>th</sup> October to 3<sup>rd</sup> November 2020

while taking photographs, where he discovered that the Respondent is extensively engaged in distribution of the HIT products in violation of the Court Order. Mr. Taratibu deponed about the secret follow-ups he made tracing the goods he alleged to be manufactured, transported, and distributed by the Respondent to some shops and centres from the Respondent's alleged warehouse located at plot No. 11, Lugoda Street, Ilala in between the Apex Tower and Aqua Tower buildings. He named particulars and Registration numbers of the trucks he alleged to be used to transport the products and the shops where the same were sold including their location.

Mr. Faraji deponed further that he confirmed that the products were HIT products coming from the Respondent by buying one piece from the consignment he was tracing and noted that the products bear an inscription of the following words: -

"Imported & distributed by: Target International (T) Limited Lugoda Street, Dares Salaam Tanzania"

He stated that he has been advised by Francis Kamuzora, one of Applicant's Advocates, who has shown him a BRELA report which he annexed with the affidavit as "EXHIBIT G9", showing that the said Aliraza Husseinali Bhimji and Shaneabbas Jessa are both shareholders and Directors of the Respondent Company.

The Respondents' counter affidavit is sworn by **SHANEABABBAS JESSA** who among other things, disputed all the allegations accusing the Applicant of court contempt and any other material contents of the affidavit. According to **Mr. Jessa**, the contents of the affidavit are not sufficient proof of court contempt which has to be addressed through criminal procedure. He denied the accusation that the Respondent dealt with

Counterfeit Mosquito repellents in any manner to disobey the unambiguous Court order.

It was revealed in the counter affidavit that Mr. Aliraza Husseinali Bhimji, co-shareholder of Mr. Shaneabbas Jessa against whom the arrest is sought in the application passed away on 6<sup>th</sup> Day of February, 2021.

The application was heard by a way of written submissions. The Applicant's submissions were drawn and filed by **Francis Kamuzora, Advocate from Bowmans Tanzania Limited** while the Respondent's submissions were drawn and filed by **Gulamhussain Yusuph Hassam, Advocate from G. Y. Hassam and Co. Advocates**

Mr. Kamuzora for the Applicant commenced his submission by quoting the provisions of **Order XXVII Rule 2(2) and section 68 (c) of the CPC** which are the enabling provisions under which this application was brought. He further cited and quoted some words which tried to define court contempt from various cases such as **Land Masters Combine Co. Ltd v Kisa Kabeja & Three Others, Miscellaneous Land Application No. 183 of 2015, High Court of Tanzania, Land Division, at Dares Salaam (Unreported); Exim Bank Tanzania Limited v Rafik Halai, Misc. Commercial Application No. 105 of 2021, High Court of Tanzania, Commercial Division, at Dares Salaam (Unreported) on Pg. 6; The Code of Civil Procedure, Sir Dinshaw Pardunji Mulla, Volume Three, Pg, 3437 (Justice Deepak Verma, Justice C K Prasad, Namit Naxena, 19<sup>th</sup> Eid,, 2017) (Mulla Code of Civil Procedure)** where the author interpreted the first paragraph of Order 39, Rule 2A of the Indian Civil Procedure Code which is identical to **Order XXXVII, Rule 2(2) of our CPC. Mr. Kamuzora** extracted from the cited



authorities some three elements which are required to prove a breach of an injunction order. He mentioned the following:

- (i) there should be clear proof that the order to be obeyed was clear, unambiguous.
- (ii) the Respondent had full knowledge of the content of the order; and
- (iii) the order was disobeyed.

On the clarity and unambiguity of the order to be obeyed **Mr. Kamuzora** submitted that the order of the court in **Misc. Commercial Application No. 54 of 2019** leaves no room for any alternative interpretation as it is clear and unambiguous in the words "The Application for temporary injunction thus granted as prayed". According to the Applicant's counsel the Respondents have never, at any point in time, claimed to have misunderstood the order hence they were aware of the order as the court documents show.

On disobedience to the court order, the Applicant's submitted further that the Affidavit of Faraji Taratibu provides an account of how he investigated the activities of the Respondent as he personally followed up on the matter from 27<sup>th</sup> October 2020 to 3<sup>rd</sup> November 2020, where he saw and took photographs of agents of the Respondent distributing products bearing HIT trademark. In his view, what was discovered by the investigation sufficiently proves disobedience of the court order.

**Mr. Kamuzora** argued that although the Respondents are disputing the investigation and its findings, they failed to use the opportunity available to cross examine the deponent of the affidavit. He questioned as to how the counterfeit HIT products were available for purchase by **Mr. Taratibu** and are still in distribution within the Tanzanian market.

**Mr. Kamuzora** countered the Respondent's facts challenging the authenticity of the photos taken by **Mr. Taratibu**. In Kamuzora's view, Mr. Taratibu clearly stated that he conducted investigations and revealed what he saw with his own eyes and has provided photographs to support his statement hence the fact that the photographs are undated is not material since the statement in the Affidavit of Faraji explains the time when the photographs were taken during the investigations.

He challenged the relevance of the ownership of the distributing vehicles raised in the counter affidavit and stated that what matters is that the vehicles were being used to distribute the counterfeit HIT products in violation of the court order.

With regards to the existence of other matters pending in this court to wit **Misc. Commercial Application No. 151 of 2021** praying to discharge the order of temporary injunction on the basis that the injunction was improperly secured and the Applicant's **Misc. Commercial Application No. 111 of 2020**, **Mr. Kamuzora** submitted that the temporary injunction which was ordered under **Misc. Commercial Application No. 54 of 2019** is still in force and has not been vacated and as such, the Respondent was bound to obey the same hence existence of these applications is immaterial in this matter.

Submitting on remedy available for disobedience of Court order, **Mr. Kamuzora** stated that such remedy is provided for by **Section 68(c), and Order XXXVII, Rule 2(2) of the CPC** which is to commit the person guilty of it as a civil prisoner and order his property to be attached and sold.

According to **Mr. Kamuzora**, the interpretation of the above provision can be found in the **Mulla Code of Civil Procedure on Page 3440** where,



**Mulla**, when interpreting a provision similar to the one above found in the Indian Civil Procedure Code, stated;

*"The pragmatic interpretation, therefore, must be this: it is open to the Court to attach the property of the disobeying party and at the same time the Court can order him to be detained in civil prison also if the Court deems it necessary."*

While acknowledging that payment of a fine can be made in lieu of civil imprisonment, **Mr. Kamuzora** submits that the Respondent in the current dispute has shown no remorse towards the alleged blatant disregard of the court order and that disregard is still continuous spanning over a year and a half, hence a fine will not be sufficient to meet the primary aim of preserving rule of law in court processes. **Mr. Kamuzora** prayed for the Respondents' directors to be arrested and detained as civil prisoners for a term not exceeding 6 months.

Having adopted the contents of the Counter Affidavit as part of the Respondent's submissions in which the alleged court contempt is disputed, **Mr. Hassam** recited those contents in his submissions. He reiterated Respondent's innocence against the alleged engagement in the distribution of Counterfeit Mosquito repellents or practices of such business of Counterfeit Mosquito by manufacturing, selling, importing or exporting or commercially dealing in any other manner with counterfeit mosquito; nor has the Respondent ever dealt in manufacturing, selling, importing or exporting or commercially dealing in any other manner with insect repelling spray bearing Trademark HIT in Tanzania Market.

**Mr. Hassam's** submissions questioned the private investigation held by **Mr. Taratibu**, naming it unlawful for lack of evidence of either the Deponent of the Affidavit or his law firm to have any license duly issued for

conducting private investigations; or evidence such as letter of engagement, invoice or payment receipt which has been adduced in proof of the Applicant's purported instructions to the Deponent's law firm and the assignment thereof to the Deponent as alleged in the Affidavit;

**Mr. Hassam** while protesting the alleged disobedience to court order claimed existence of other tenants in the warehouse alleged to be visited by Mr. Taratibu in his said private investigation. He father claimed lack of authentication of photographs named in the Affidavit alleging them to be maliciously fabricated, edited and tempered with.

**Mr. Hassam** further challenged the applicant's *locus stand* following what he asserted to have been revealed in **Miscellaneous Commercial Application No. 111 of 2020** filed on **10<sup>th</sup> July 2020**, seeking to amend the Complaint in the **Commercial Case No. 60 of 2019** being the main suit and anchor of which the Application for Temporary Injunction was sought and obtained, and the Drawn Order extracted therefrom. According to **Mr. Hassam**, it is apparent in **Miscellaneous Commercial Application No. 111 of 2020** and specifically the Applicant's Affidavit that the Applicant not only lacks the requisite *locus standi*, but also out-plied on oath that the applicant is the owner of the Trade Mark "HIT and manufacturer of the disputed products.

It is alleged by **Mr. Hassam** that a recent Search Reports duly issued by the Registrar of Trade and Services Mark confirms that the Applicant doesn't own any mark in the name of "HIT" nor had the Applicant previously owned any such mark and neither does it have any registered right with Godrej Household Products Limited. According to him, consequently, the Respondent filed **Misc. Commercial Application No. 151 of 2020** before this Court, which is still pending, seeking to





discharge, vary and or set aside the Order of Temporary Injunction which was secured inappropriately by the Applicant. **Mr. Hassam** questioned the present application for being actuated by mala-fides and despite the consequences which if granted, could be grave with far reaching as to have the Respondent's liberty curtailed through civil imprisonment.

**Mr. Hassam** have referred to a complaint lodged by the Applicant in the Fair Competition Commission (FCC) which he asserts to be substantially as the same as the present application against the Respondent to which the FCC replied, inter-alia, that before taking any action against a person complained against, it (the FCC) always ensures that the complaint is justified or rather legitimate hence to-date, no finding of foul-play has ever been made by the FCC against the Respondent.

Having recounted and expounded the contents of counter affidavit and expounded the aforesaid underlying facts pertaining to the entire surrounding background facts of the matter as herein above stated, **Mr. Hassam** framed an issue as to whether under the circumstances the Respondent can be said to have committed an act of contempt to the Court's order of August 11, 2020.

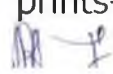
Citing the decision of the Court of Appeal of Tanzania (at Dar Es Salaam) in **Mr. Lothi & 2 Others vs. The Registered Trustees of The Anglican Church of Tanzania (SO 4757) & Another: Civil Revision No. 1 of 2011 (Unreported)**, **Mr. Hassam** submitted that the Applicant's complaint, fall within the scope of offences relating to the administration of justice, and hence punishable pursuant to the provisions of **Chapter XI of the Penal Code [Cap. 16 R.E 2019]**, under Section 114A(b) which provides: -

*"Any person who wilfully obstructs or knowingly prevents or in any way interferes with or resists the execution of any summons, notice of order, warrant, or other process issued by a court is guilty of an offence...."*

The above being the case, in **Mr. Hassam's** view, the investigation of an offence falling within the scope of the **Penal Code** must be undertaken according to the **Criminal Procedure Act [Cap. 20 R.E 2019]** and specifically under **Section 4 (1) and (2)** which is also the case with regards to provision of the **CPC** under which the Chamber Summons was brought.

Since the investigation was not conducted by the police, **Mr. Hassam** is of the view that the said investigation purported to be conducted by an advocate hired for a fee, through Faraji Taratibu is legally and factually flawed for lacking legal provision empowering the Mr. Taratibu to conduct it; evidence of Applicant's appointment of Faraji Taratibu's firm of lawyers to conduct it and any license duly issued or at all for conducting private investigations.

With regards to the photographs alleged to be taken during the investigation, **Mr. Hassam** cited the case of **Juma Alibax Said vs. R (1967) HCD 383** and stated that in the instant case, the entire Affidavit of Faraji Taratibu neither shows nor explains who took the purported photographs nor does it show the process by which those photographs were manufactured which contravenes the principle in **Juma Alibax** cited **supra**. He submitted that the purported photographs are not admissible in evidence because this Court is not in a position to make a finding that the devices used to take the purported photographs and later to process/generate the photographs into prints- out were at all material



times working properly and were tamper-free. To support this argument, **Mr. Hassam** cited further the case of **Emmanuel Godfrey Masonga vs. Edward Franz Mwalongo & 2 Others, Misc. Civil Cause No. 6 of 2015**. Assuming the purported photographs to have been taken by a smartphone camera, **Mr. Hassam** submitted that the same would have been electronic evidence, namely, prints-out of electronic data from a camera, which is an electronic data retrieval mechanism, hence it ought to have first been authenticated by complying with **Section 18 of the Electronic Transactions Act, 2015**.

Challenging the applicability of the physical samples purported to have been purchase by the Faraji Taratibu, the Respondent's counsel submits that the said physical samples could not help to salvage the Applicant's application as they too would be suspected of being fruits of an unlawful investigation.

Furthermore, he contended that none of the purported vendors or distributors of the alleged HIT products swore/affirmed any affidavit to corroborate the allegations contained in the Faraji Taratibu and as such and being the Applicant's paid purported investigator, Mr. Taratibu cannot be an impartial, fair and trustful witness. The absence of corroborative affidavits from other independent deponents according **Mr. Hassam**, seals the fate of the Applicant's application.

It is further submissions by **Mr. Hassam** that the standard of proof required of the Applicant is not on balance of probabilities but beyond reasonable doubt. He cited **Justice Roy, Contempt of Court, 5<sup>th</sup> Edition**, quoting from the decision of the Supreme Court of India in the case of **Dushyant Somal versus Sushma Somal AIR 1981 SC 1026: (1981) 2 SCC 277**. Quoted from page 8 stated: -

*"Nor is person to be punished for contempt of court for disobeying an order of court except when the disobedience is established beyond reasonable doubt, the standard of proof being similar, even if not the same, as in criminal proceeding. Where the person alleged to be in contempt is able to place before the court sufficient material to conclude that it is impossible to obey the order, the court will not be justified in punishing the alleged contemner",*

He further cited **Exim Bank Tanzania Limited versus Rafik Halai; Misc. Commercial Application No. 105 of 2021 (Hon. Mkeha J) (Unreported)**

The Applicant filed a rejoinder. Although its contents are not detailed here, the arguments therein will be taken on board in determining the merits of this application. From the affidavit, counter affidavit and the parties' submissions, the issue which features for consideration is "**whether the applicant has established sufficient grounds to warrant arrest and detention of the Respondent's Directors as civil prisoners for disobeying the Court order dated 11<sup>th</sup> August 2020.**"

To answer the above issue, I will start by exploring the law guiding arrest and detention of a person as a civil prisoner for disobeying the court order. This application is brought under **Order XXXVII Rule 2(2) of the CPC**. Generally, **Order XXXVIII Rule 2 of the CPC** guides courts injunctions. For the purposes of clarity, I reproduce it hereunder:

*" 2.- (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from*

*committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right:*

*Provided that, ..... N/A.*

*(2) In case of disobedience or of breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained as a civil prisoner for a term not exceeding six months, unless in the meantime the court directs his release.*

*(3) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto."*

Another provision which guides temporary injunction is Section 68 (c) of the CPC which provides as follows:

*"In order to prevent the ends of justice from being defeated the court may, subject to any rules in that behalf-*

*a) N/A*

*b) N/A*

*c) grant a temporary injunction and in case of disobedience commit the person guilty thereof as a civil prisoner and order that his property be attached and sold."*

From the above provision, and for the purposes of the matter at hand, disobedience must be established as a prerequisite to the granting of an

order for arrest and detention. Whether disobedience of court order also means court contempt is not disputed in this matter. The question is when the court should confirm that there was a disobedience and how such disobedience is to be proved.

From the authorities he cited (**Land Masters Combine Co. Ltd supra, Exim Bank Tanzania Limited supra, The Code of Civil Procedure by Sir Dinshaw Pardunji Mulla supra**), **Mr. Kamuzora** extracted some three prerequisites to warrant the arrest and detention of a person as a civil prisoner for disobedience of court order. The said prerequisites are as follows: -

- (i) There should be clear proof that the order to be obeyed was clear and unambiguous.
- (ii) The Respondent had full knowledge of the contents of the order; and
- (iii) The order was disobeyed.

These formed points of debate in parties' submissions. However, it is not disputed that the Respondent was aware of the court order which granted injunction to restrain the Respondent or its agents or servants from manufacturing, selling, importing or exporting or commercially dealing in any other manner with the counterfeit mosquito and repellent spray bearing the HIT Trade Mark in the Tanzanian market pending the determination of **Commercial case No. 60 of 2019**. What seems to be debated extensively covers the two-remaining points one on existence of clear proof that the order to be obeyed was clear, unambiguous and item another one on the established disobedience to the order.

Whether an order is unclear and ambiguous, there should be a mechanism which has confirmed and legally declared the order to be so. **Mr. Hassam**



has submitted extensively trying to establish illegality in the proceedings of **Commercial Case No. 60 of 2019** in which the order for temporary injunction which is alleged to have been violated is anchored. He based the said illegality on lack of Applicant's *locus stand* in **Commercial Case No. 60 of 2019**. I assume that this argument tries to establish that the restraint order emanating from Commercial Case No. 60 of 2019 was ambiguous and unclear for being stemming out of proceedings instituted by someone with no **locus stand**. In my view, this argument by **Mr. Hassam** cannot confirm that the decision of the court was ambiguous or unclear. To prove lack of clarity in a decision of the court, the Respondent should have produced a decision rendered by a relevant authority to confirm the unclearness in that decision. This court is neither placed in a position to do so nor moved to do so. Lack of this confirmation leaves the restraint court order from **Miscellaneous Commercial Application No. 54 of 2019** to be clear and unambiguous unless otherwise proved.

What remains now is **whether there is a disobedience to the court order in Miscellaneous Commercial Application No. 54 of 2019**. **Mr. Hassam** challenged the way the investigation was conducted. In his view, it ought to have been conducted pursuant to **Section 114 A (b) the Criminal Procedure Act [Cap. 20 R.E 2019] (the Penal Code)** and Section 4 (1) and (2) thereof. I have considered the arguments advanced in the parties' submissions on this aspect. I have gone through the case of **Mr. Lothi supra** cited by Mr. Hassam and I share views with **Mr. Kamuzora** with regards to its applicability in the circumstances of this case.

In **Mr. Lothi**, the Court of Appeal was revising the decision of the High Court which was made in absence of Chamber application. This is a distinct circumstance from what is in the instant application where the Court is

moved by a way of Chamber Summons under **Order XXXVII Rule 2(2) of the CPC**. The views of their Lordship's Justices of Appeal in **Mr. Lothi supra** were to the effect that **Section 114 of the Penal Code** applies where the court takes cognisance of the offence of contempt during the conduct of the proceedings. Let it be noted that in this matter, this court is moved by a chamber summons which distinguishes its context from that of **Mr. Lothi supra**. The relevant words are quoted hereunder for ease of reference:

*"The learned High Court judge quoted provisions which enable him to summarily punish for contempt committed in view of the court while the record shows that the alleged offenders were not present in court. We are of the view that the absence of the alleged offenders in court is what made the learned High Court judge to further order the arrest and prosecution of Archbishop Valentino Mokiwa and Stanley Kano Hotay respectively. In REPUBLIC vs DICK (1964) EA. 519 it was held, inter alia, that:-*

*"ii) the conviction under S. 114 (1) was wrong because the subsection refers to an offence committed whilst judicial proceedings are in progress whereas the proceedings in question had been completed when the letter was written."*

*Under Section 114 (1) of the Penal Code which the learned High Court judge quoted as the enabling provision, a court is required to take cognisance that an offence of contempt has been committed in his view and proceed to punish accordingly. Taking cognisance means taking notice and holding fact that a certain factual position exists. The learned judge could not take cognisance of an offence whose offenders were not before him, and one of whom was not*



*even a party to the proceedings before him. The first respondent is the Registered Trustees of the Anglican Church of Tanzania, and there is nothing on record to show that Archbishop Valentino Mokiwa is one of the Registered Trustees."*

The distinction between **Lothi** supra and the instant case is outright apparent in the above quoted words.

I am one with **Mr. Kamuzora** in the rejoinder submissions that since the matter is brought under enabling provision of the **CPC** there is no mandatory requirement that **Penal Code** shall be the only law to deal with court contempt. **Order XXXVII Rule 2(2) and Section 68 (c)** of the **CPC** are self-explanatory and suffice for the purposes of disobedience on court order in civil Proceedings.

Another point of argument to be resolved falls on the standard of proof required for court contempt in civil proceedings and whether the said balance is met in this application. According to **Mr. Hassam**, the standard of proof required is beyond reasonable doubt and not on balance of probability. He had several concerns on the sufficiency of the strength of evidence adduced to prove court contempt. These concerns include the mandate of conducting investigation by the deponent of the affidavit **Mr. Taratibu**, the authenticity of the photographs taken during the investigation and lack of corroboration to the sole evidence of **Mr. Taratibu** in the Affidavit. With regards to the mandate to conduct the investigation, I share view with **Mr. Kamuzora** that these proceedings are brought under the **CPC** and therefore, involvement of a police officer is not mandatory. It is not a new practice in Civil proceedings that parties have duties to make their own case, equally they have duties to collect evidence to prove their case. If a private investigation provides a party with sufficient evidence to



prove the case to the required standard, I see no reason to prohibit a party in Civil proceedings to conduct investigation since there is no law which specifically prohibits such a practice. He who alleges must prove. It is a sole responsibility of the applicant in this application to find evidence to prove what she alleges. I am in one with the Applicant's counsel that what is not prohibited is allowed. I therefore find that there is nothing wrong for Mr. Faraji to conduct the investigation on behalf of the applicant in a bid to make their case.

On the issue of standard of proof in civil court contempt, I am guided by the position taken by my learned brother Hon. Mkeha, J in **Exim Bank Tanzania Limited** cited supra. He held:-

*"..... I was however fortunate that, some persuasive English case laws came to my aid.*

*According to the said decisions, a person can only be held guilty of civil contempt, for breaking the terms of a court's order only if it can be proved that a breach has been committed by the respondent and that, the standard of proof is that applicable in criminal cases, that is, the breach must be proved beyond reasonable doubt. Two of the decisions are cited hereunder:*

*"In Re Bramblevale Ltd (1969) 3 ALL ER 1062 the defendant, as managing director of a company which was being wound up, had been brought before the court on a summons by the liquidator, for his alleged contempt in not complying with an order made by the Registrar to produce certain books belonging to the company. The defendant claimed that at the time of the order the books no longer existed, because as a result of a car accident a year earlier, the books had become soaked in petrol and 8 inadvertently thrown away.*



*The court did not believe this story and committed the defendant indefinitely for contempt. The following month, the defendant applied for release before the same court. The application was unsuccessful. The court held that, .... there are only two possibilities '....either he still has them or else he no longer has them, whether by reason of loss, destruction, transfer to someone else or otherwise....that he has himself to blame/ An appeal was successfully made to the appellate court. Lord Denning MR said:*

*A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond all reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence..... Where there are two equally consistent possibilities open to the court, it is not right to hold that the offence is proved beyond reasonable doubt."*

*The above cited decision was followed by another Court of Appeal decision, in Knight vs. Clifton, (1971) 2 ALL ER 378 where the Court said: Contempt of court of the type that consists in breach of an injunction or undertaking, is something that may carry penal consequences, even loss of liberty, and the evidence required to establish it must be appropriately cogent. I am highly persuaded by the above cited authorities. I also hold that, the standard of proof required to establish a civil contempt, is that obtaining in criminal cases, that is, beyond reasonable doubt.*

From the above case, contempt in civil proceedings attract the same standard of proof as the one used in Criminal contempt. The standard for both is "beyond reasonable doubt". The essence of this position is the nature of sanctions which follow when contempt is established. Both criminal and civil contempt attract serious consequences which travel as far as curtailing the liberty of a contemnor by imprisonment. The standard of proof must be high when such a serious penal sanction is about to be involved.

Now the question which remains is whether the Applicant has proved the Respondent's disobedience to the court order beyond a reasonable doubt. The only available evidence is the affidavit of Mr. Faraji Taratibu which contains facts alleged to have been collected by the deponent when conducting private investigation. The substantive contents of the affidavit were vehemently disputed by the counter affidavit of the Respondent's Director Mr. Shaneabas Jessa which apart from denying disobedience to the court order, challenged the authenticity of photos taken by the Mr. Faraji Taratibu leaving unanswered questions such as **whether the photographs are electronic or not; if yes, whether the devices used were properly functioning without a tempering possibility; and if electronic, whether there was an affidavit of authenticity in accordance with Section 18 of the Electronic transactions Act, No. 13 of 2015.** These were the questions which lacked answers from the applicant's evidence which in my view, raised reasonable doubt which ought to be cleared by the Applicant's evidence.

Further to the aforesaid, the sole sworn statement of Mr. Taratibu was not corroborated or supported by any other sworn statement despite of several persons mentioned in the affidavit to have been involved in entire chain of events, involving manufacturing, transportation and receiving of the




products in the distribution centres including the personnel of the stores in which the alleged HIT products were sold in disobedient to court order, together with the shopkeeper who sold a piece of HIT product to the deponent.

All these raised a doubt as to who is right between Mr. Faraji Taratibu and Mr. Shaneabas Jessa as both took oaths against each other. It was the applicant who was duty bound to clear the doubt pursuant to Section **110 of the Evidence Act, Cap 6 of R.E 2019** which requires a proof from who alleges.

Up to this juncture, I can hold that the evidence provided by the applicant has not proved disobedience of court order to the required standard. Without such a proof, the answer as to **"whether the applicant has established sufficient grounds to warrant arrest and detention of the Respondent's Directors as civil prisoners for disobeying the Court order dated 11<sup>th</sup> August 2020"** is in the negative. Therefore, no sufficient grounds laid to warrant arrest and detention as prayed by the applicant. Consequently, this application is dismissed with costs. It is so ordered.

Dated at Dar es Salaam this 28<sup>th</sup> Day of January 2022



  
**KATARINA T. REVOCATI MTEULE**  
**JUDGE**  
**28/1/2022**