



REPUBLIC OF KENYA

IN THE PRINCIPAL MAGISTRATE'S COURT AT WEBUYE

CIVIL SUIT NO. 38 2020

JOSEPHINE NYAMBURA THUO.....PLAINTIFF/APPLICANT
 VERSUS
 CHIEF OFFICER ROADS TRANSPORT
 INFRASTRUCTURE AND PUBLIC WORKS.....1ST RESPONDENT
 THE COUNTY GOVERNMENT OF BUNGOMA.....2ND RESPONDENT
 COUNTY SECRETARY COUNTY GOVT. BUNGOMA.....3RD RESPONDENT

#IKUWEIKUWE copy

NOTICE OF MOTION

(Under Order 40 rules 3 of the Civil Procedure Rules, Sections 1A, 1B, 3, 3A
 and 63(e) of the Civil procedure Act and all enabling provisions of Law)

TAKE NOTICE that this Honourable Court shall be moved on the...27th day
 of...APRIL...2020 at 8.30 o'clock in the forenoon or soon thereafter
 for **ORDERS:-**

1. THAT this application be certified urgent and heard ex parte in the first instance.
2. THAT the Respondents, their agents and/or servants be restrained from making any payments to any persons or companies in respect of tender Nos. BGM/CNTY/RPW/RMLF/OT/001/2019-2020, BGM/CNTY/RPW/RMLF/OT/028/2019-2020, BGM/CNTY/RPW/CEF/OT/001/2019-2020, BGM/CNTY/RPW/CEF/OT/028/2019 - 2020 pending the hearing of this application inter parties.
3. THAT the Respondents herein be detained in prisons for a period of six months for being in disobedience of this Courts orders dated 30th march, 2020.
4. THAT any other order this Court may deem just and expedient to grant in the circumstances.
5. THAT the costs of this application be provided for.

6. **THAT** this matter came to my knowledge as the site are public and as someone interested I took time to visit this sites.
7. **THAT** from the above it is clear that the Respondents are in total disobedience of this Courts orders. **#IKUWEiKUWE copy**
8. **THAT** I am informed by my Advocates on record, which information I verily believe to be true that Court orders are not issued in vain but must be obeyed by all and any breach or disobedience calls for punishment as established by law.
9. **THAT** to protect the Court and the rule of law the Respondents should be detained in prison for a period not exceeding six month.
10. **THAT** the speed at which the Respondents have mutated their illegal actions raise eye brows and it is a clear indication that they either run or have interest in the companies/persons either through proxies.
11. **THAT** the Courts should not allow the Respondents to perpetuate their illegalities at all.
12. **THAT** this application is made in good faith without undue delay.
13. **THAT** I make this affidavit in support of the application herein.
14. **THAT** what I have stated herein is true to the best of my knowledge, belief and information.

SWORN at..... *Eldoret*by the said

JOSEPHINE NYAMBURA THUO

This..... *14th* day of..... *April*2020.....

J N Thuo
DEPONENT

BEFORE ME--
WILLIAM NDINYA ADVOCATE
AND COMMISSIONER FOR OATHS
P.O BOX 4659-80100
ELDOROT
A COMMISSIONER FOR OATHS

DRAWN AND FILED BY
M/S ATHUNG'A & CO.
ADVOCATES.
ARCADE HOUSE, 2ND FLOOR, SUITE 14,
MOI HIGHWAY,
P.O BOX 176-50205,
WEBUYE.

WHICH APPLICATION is grounded upon the annexed affidavit of JOSPHINE NYAMBURA THUO the grounds below and any other reasons to be adduced at the hearing hereof.

Grounds-

- a) The Respondent are in disobedience of the Courts order dated 30. 3. 2020.
- b) To preserve the dignity of this Court.
- c) The Respondents are to be punished as per the law established as they are in contempt of Court.
- d) No payments should be made towards the said tenders as it amounts to perpetuating the Respondents illegal actions and their contemptuous conduct.
- e) In the interest of justice.

DATED AT WEBUYE THIS.....14th.....DAY OF.....April.....2020

M/S ATHUNG'A & CO.
ADVOCATES FOR THE APPLICANT

DRAWN AND FILED BY:
M/S ATHUNG'A & CO.
ADVOCATES.
ARCADE HOUSE, 2ND FLOOR, SUITE 14.
P.O BOX 176-50205,
WEBUYE.

P.NO LSK/2020/02848

0721993372
Email - Wathunga@Telco.cm

TO BE SERVED UPON
ANNET MUMALASI & CO. ADVOCATES

BUNGOMA TEACHERS SACCO PLAZA,

3RD FLOOR, RM 128, MOI AVENUE

P.O BOX 2281-50200

BUNGOMA.

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REPUBLIC OF KENYA
IN THE PRINCIPAL MAGISTRATE'S COURT AT WEBUYE

CIVIL SUIT NO. 38 2020

JOSEPHINE NYAMBURA THUO.....PLAINTIFF/APPLICANT

VERSUS
CHIEF OFFICER ROADS TRANSPORT
INFRASTRUCTURE AND PUBLIC WORKS.....1ST RESPONDENT
THE COUNTY GOVERNMENT OF BUNGOMA.....2ND RESPONDENT
COUNTY SECRETARY COUNTY GOVT. BUNGOMA.....3RD RESPONDENT

ORDER

THE APPLICATION dated 30 . 3. 2020, coming up for hearing on 30/3/2020 Before
Hon. N. Barasa AND UPON HEARING Counsel for the Applicant

IT IS HEREBY ORDERED

1. THAT the application dated 30/3/2020 be and is hereby certified urgent and heard ex parte in the first instance.
2. THAT a temporary injunction does issue restraining the Respondents/Defendants and/or its agents from secretly and unlawfully awarding tenders NOS. BGM/CNTY/RPW/RMLF/OT/001/2019,2020BGM/CNTY/RPW/RMLF/OT/028/2019,2020,BGM/CNTY/RPW/CEF/OT/001/2019-2020 BGM/CNTY/RPW/CEF/OT/028/2019 - 2020, without following due process pending the hearing of the application inter parties.

3. THAT the application dated 30/3/2020 be mentioned on the14th day of 2020



DATED AT WEBUYE THIS 14th DAY OF March 2020

Signature: Nancy N. Barasa
Date:.....14th MAGISTRATE

GIVEN under my hand and seal of this court this.....day of.....2020



Signature: Nancy N. Barasa
Date:.....sign:..... MAGISTRATE

PENAL NOTICE
TAKE NOTICE

that this is a lawful court order and any person served must obey it failure of which he or she will be in contempt of court and liable to be punished as per the law established

Summons to Enter Appearance O.V.r 1(1) (a)



CIVIL 1B



REPUBLIC OF KENYA

IN THE PRINCIPAL MAGISTRATE'S COURT AT WEBUYE

CIVIL SUIT NO. 38 2020

Received by M. M. M. 22/03/2020 10:20am

JOSEPHINE NYAMBURA THUO..... PLAINTIFF
c/o ATHUNG'A & CO. ADVOCATES.

VERSUS

CHIEF OFFICER ROADS TRANSPORT
INFRASTRUCTURE AND PUBLIC WORKS..... 1ST DEFENDANT

THE COUNTY GOVERNMENT OF BUNGOMA... .. 2ND
DEFENDANT

COUNTY SECRETARY COUNTY GOVT. BUNGOMA..... 3RD DEFENDANT

TO:

CHIEF OFFICER ROADS TRANSPORT
INFRASTRUCTURE AND PUBLIC WORKS

WHEREAS the above named plaintiff has instituted a suit against you upon the claim, the particulars of which are set out in the copy of plaint with annexure attached hereto. YOU ARE HEREBY REQUIRED within 15 days from the date of service hereof to enter an appearance in the said suit.

Should you fail to enter an appearance within the time mentioned above, the Plaintiff may proceed with the suit and judgment may be given in your absence.

Given under my hand and Seal of the Court this 22 day of March 2020



NANCY N. BARAS
SENIOR PRINCIPAL MAGISTRATE

MAGISTRATE/EXECUTIVE OFFICER

Note: You may appear in this by entering an appearance either personally or by dully appointed Advocate at..... Appearance can be entered by filing with the Court Memo of Appearance (forms are obtained from Court at 15 cents each) in duplicate, showing the defendant's address for service. A filing fee must accompany such memoranda. A copy of Memo of Appearance should also be sent to the Plaintiff or his Advocate, if any.

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REPUBLIC OF KENYA
IN THE SENIOR PRINCIPAL MAGISTRATE'S COURT AT WEBUYE
CIVIL SUIT NO 38 OF 2020



JOSEPHINE NYAMBURA THUO PLAINTIFF
VERSUS
CHIEF OFFICER ROADS,
TRANSPORT, INFRASTRUCTURE AND PUBLIC WORKS 1ST DEFENDANT
THE COUNTY GOVERNMENT OF BUNGOMA 2ND DEFENDANT
THE COUNTY SECRETARY,
COUNTY GOVERNMENT OF BUNGOMA 3RD DEFENDANT

AFFIDAVIT OF SERVICE

I Moses Osundwa Shikanda of P. O. Box 280 - 30300 Kapsabet do hereby make oath and state as follows: -

1. **THAT**, I am a Process Server of the High Court of Kenya and therefore authorized to effect Court processes working at Kapsabet Law Courts.
2. **THAT**, on 30TH March, 2020, I received from the firm of Athun'ga & Co. Advocates An ORDER, Certificate of Urgency, Complaint, Verifying Affidavit, List of documents, List of witnesses, plaintiff statement, sermons to enter appearance to effect service upon the defendants.
3. **THAT**, on the same date I travelled from Webuye to Bungoma by private means and at 15:52 hrs I found the county Public relations officer one Bonface Wyne Nyongesa and on 31st March, 2020 I met the Chief Officer one Mr. Marango who upon introduction and purpose of visit they both accepted service by signing and rubber stamping on the face of my copy after consulting the legal department
4. **THAT**, I make this oath conscientiously believing therefore deponed particulars to be true to the best of my knowledge, information and belief.

Sworn at Webuye this 6th day of April, 2020.

By the said: **Moses Osundwa Shikanda** }
This ... 6th day of April, 2020. }

MOSES OSUNDWA
SHIKANDA
Tel: 0723 111918
Date: ... Deponent: ...

Before Me
P.O BOX 4659-ELDORET
MAGISTRATE/ COMMISSIONER FOR OATHS.

Summons to Enter Appearance O.V.r 1(1) (a)



REPUBLIC OF KENYA

IN THE PRINCIPAL MAGISTRATE'S COURT AT WEBUYE

CIVIL SUIT NO. 2020

JOSEPHINE NYAMBURA THUO.....PLAINTIFF
c/o ATHUNG'A & CO. ADVOCATES,

VERSUS

CHIEF OFFICER ROADS TRANSPORT
INFRASTRUCTURE AND PUBLIC WORKS.....1ST DEFENDANT
THE COUNTY GOVERNMENT OF BUNGOMA... ..2ND
DEFENDANT
COUNTY SECRETARY COUNTY GOVT. BUNGOMA..... ..3RD DEFENDANT

TO:
THE COUNTY SECRETARY
COUNTY GOVT. BUNGOMA

WHEREAS the above named plaintiff has instituted a suit against you upon the claim, the particulars of which are set out in the copy of plaint with annexure attached hereto. YOU ARE HEREBY REQUIRED within 15 days from the date of service hereof to enter an appearance in the said suit.

Should you fail to enter an appearance within the time mentioned above, the Plaintiff may proceed with the suit and judgment may be given in your absence.

Given under my hand and Seal of the Court this 3rd day of April 2020



Bunga Wayne
COUNTY GOVERNMENT OF BUNGOMA
PUBLIC RELATIONS OFFICER
OFFICE OF THE GOVERNOR
Tel: 0726 393939
Time



Nancy N. Barasa
NANCY N. BARASA
SENIOR RESIDENT MAGISTRATE

Date:.....
MAGISTRATE/EXECUTIVE OFFICER

Note: You may appear in this by entering an appearance either personally or by dully appointed Advocate at..... Appearance can be entered by filing with the Court Memo of Appearance (forms are obtained from Court at 15 cents each) in duplicate, showing the defendant's address for service. A filing fee must accompany such memoranda. A copy of Memo of Appearance should also be sent to the Plaintiff or his Advocate, if any.

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VERSUS

CHIEF OFFICER ROADS TRANSPORT
INFRASTRUCTURE AND PUBLIC WORKS.....1ST RESPONDENT
THE COUNTY GOVERNMENT OF BUNGOMA.....2ND RESPONDENT
COUNTY SECRETARY COUNTY GOVT. BUNGOMA.....3RD RESPONDENT

CERTIFICATE OF URGENCY

I, WASHINGTON ATHUNG'A, an advocate of the High Court of Kenya do hereby certify that the application herein is urgent and should be heard on priority basis as the Respondents are in total disobedience of this Courts order and are on high gear to continue to disobey the Court orders as they are processing payments to alleged contractors, who have taken the contract site on 8. 4. 2020 after the Respondents had been served and if the Respondents illegal actions are allowed to continue it will bring the Court into disrepute and render the entire application and the suit otiose. Hence the application should be certified urgent and heard on priority basis.

DATED AT WEBUYE THIS.....14th.....DAY OF.....April.....2020

M/S ATHUNG'A & CO.
ADVOCATES FOR THE APPLICANT

DRAWN AND FILED BY:

M/S ATHUNG'A & CO.
ADVOCATES.
ARCADE HOUSE, 2ND FLOOR, SUITE 14.
P.O BOX 176-50205,
WEBUYE.

P.NO LSK/2020/02848
0721953372

TO BE SERVED UPON

ANNET MUMALASI & CO. ADVOCATES

BUNGOMA TEACHERS SACCO PLAZA,

3RD FLOOR, RM 128, MOI AVENUE

P.O BOX 2281-50200

BUNGOMA.

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INFRASTRUCTURE AND PUBLIC WORKS.....1ST RESPONDENT
THE COUNTY GOVERNMENT OF BUNGOMA.....2ND RESPONDENT
COUNTY SECRETARY COUNTY GOVT. BUNGOMA.....3RD RESPONDENT

SUPPORTING AFFIDAVIT

I, JOSEPHINE NYAMBURA THUO of P.O Box 621 WEBUYE within the Republic of Kenya do hereby make oath and state as follows;

1. **THAT** I am the Applicant herein and therefore competent to make this affidavit.
2. **THAT** on 30. 3. 2020 this Court issued an order restraining the Respondents from awarding tender Nos. BGM/CNTY/RPW/RMLF/OT/001/2019-2020, BGM/CNTY/RPW/RMLF/OT/028/2019- 2020 BGM/CNTY/RPW/CEF/OT/001 BGM/CNTY/RPW/CEF/OT/028/2019-2020. Annexed hereto and marked JN1 is a Photostat copy of the said order.
3. **THAT** the said order together with the pleadings herein were duly served upon the Respondents who duly acknowledged receipt. Annexed hereto and marked JN2 is a Photostat copy of the affidavit of service.
4. **THAT** I have learnt that the Respondents in total disobedience of the Court order did illegally place some persons or companies on site on the 8. 4. 2020.
5. **THAT** I have also learnt that the Respondents with an aim to defeat justice have started processing payments towards the said persons or companies as the Respondents Certificates to show that work is almost complete.

Received

A handwritten signature in blue ink, appearing to be 'A. S.', written over the word 'Received'.

15/4/2020