



**Sameja trading as Business 2000 v Shah & 5 others (t/a High Park Investments); Shah (Objector)
(Civil Suit 689 of 2001) [2024] KEHC 16323 (KLR) (Civ) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16323 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL SUIT 689 OF 2001**

**CW MEOLI, J
DECEMBER 20, 2024**

BETWEEN

AZIM SAMEJA TRADING AS BUSINESS 2000 PLAINTIFF

AND

LAKHASMISHI VIRPAL SHAH 1ST DEFENDANT

KAMLABEN LAKHASMISHI SHAH 2ND DEFENDANT

SURESHANDRA LAKHAMSHI SHAH 3RD DEFENDANT

ASHOKKURMAR LAKHAMSHI SHAH 4TH DEFENDANT

HARSHA LAKHASMISHI SHAH 5TH DEFENDANT

PRATIMA LAKHAMSHI SHAH 6TH DEFENDANT

T/A HIGH PARK INVESTMENTS

AND

JITENDRAKUMAR LAKHAMSHI SHAH OBJECTOR

RULING

1. The motion dated 08.04.2024 was filed by Azim Sameja trading as Business 2000 (hereafter the Applicant) seeking inter alia that the Lakhamshi Virpal Shah, Kamlaben Lakhamshi Shah, Sureshandra Lakhamshi Shah, Ashokkurmar Lakhamshi Shah, Harsha Lakhamshi Shah and Pratima Lakhamshi Shah t/a High Park Investments (hereafter the Respondents) and Jitendrakumar Lakhamshi Shah (hereafter the Objector) be held in contempt of the preservation order issued by this Court on 16.05.2019; that the Respondents and Objector be committed to jail for six (6) months for contempt of Court; and that the Respondents and Objector be denied audience of the Court until they purge



their contempt and refrain from any developments on the preserved property, as ordered by the Court. The motion is expressed to be brought among others pursuant to Section 3A & 63(c) of the Civil Procedure Act (CPA) and Order 51 Rule 4 of the Civil Procedure Rules (CPR) and premised on the grounds on its face, as amplified by the affidavit sworn by the Applicant.

2. The gist of his deposition is that this Court on 16.05.2019 granted initial prohibition order, confirmed when the Court determined the motion dated 08.05.2019 allowing the Applicant to proceed with execution through sale of the property known as LR.209/5802 (hereafter the suit property). That upon grant of the prohibition order his counsel proceeded to have the order registered against the suit property having duly served the Respondents' counsel who subsequently moved the Court to have the original judgment set aside and or varied, to no avail. He further deposed that the purpose of the instant motion is to preserve the sanctity of this Court's orders.
3. He contended that the Respondent partners are all liable and or vicariously liable for the actions of their co-partners and duty bound to settle the judgment and any liabilities arising from the partnership, inclusive of purging the contempt of Court. He goes on to depose that the Respondents have been interfering with the status of the attached suit property and specifically the Objector who purports to have carried out demolitions in March of 2019 whereas the same was done after 04.07.2022, in clear violation of the prohibition orders issued in May of 2019.
4. He states that the buildings that were standing on the suit property were all demolished and that the Respondents and the Objector have commenced fresh construction work on the property despite the property having been proclaimed in execution as per the warrants duly issued to Bealine Kenya Auctioneers. Moreover, this Court on 17.05.2023 delivered a ruling to the effect that the Objector had no proprietary and or any interest in the attached suit property and that the Court ought to allow the motion to prevent the Respondents from shifting goal posts asserting that the ruling of the Court of Appeal delivered on 31.03.2023 in respect of the Objector's application for stay of execution of the decision of this Court, stated that the stay orders granted were not meant to lift attachment to the prejudice of the Applicant. That by their conduct, both the Respondents and Objector have by themselves or through their proxies continued to show disregard of the judicial process, which conduct amounts to contempt of Court. In summation he urges the Court does not hear the Respondents and Objector until they purge the contempt.
5. The Respondents oppose the motion by way of a replying affidavit dated 21.05.2024 and sworn by Pratima Lakhamshi Shah who asserts his authority to swear the affidavit on his behalf and that of his Co-Respondents. He attacks the motion as a non-starter, incompetent and liable to be dismissed for having being brought under strange provisions of law. He further states that Lakhamshi Virpal Shah, Kamlaben Lakhamshi Shah, Ashokkurmar Lakhamshi Shah are deceased, and the Objector and Rajnikant Lakhamshi Shah granted probate letters in respect of Kamlaben Lakhamshi Shah who was earlier granted letters in respect of Lakhamshi Virpal Shah, also deceased. In his view, the motion is replete with unsupported allegations intended to mislead the Court into issuing orders that would prevent the Respondents from addressing the core issues in the matter. He states that the order of this Court issued on 16.05.2019 has not been reviewed, varied, and or interpreted, and therefore as it stands, the order only prohibits the transfer and charging of the suit property but does not preclude the Respondent from undertaking developments on the suit property. He views the Applicant's motion as an attempt to review the Court's order of 16.05.2019. He assailed the said order by contending that the originating decree of this Court relates to payment of the decretal sum and not a disposition in interest of land by which the Applicant can claim ownership over the suit property.
6. Contending further that contempt proceedings are quasi-criminal in nature and are personal to the contemnor(s), hence cannot be pursued against the personal representatives of deceased parties arising



from resulting abatement upon the death of the said alleged contemnor(s). He disputes the Applicant's interpretation of the Court of Appeal order on stay by stating that the Court of Appeal did not grant the Applicant proprietary rights over the suit property. And that the dispute before the Court being in respect of execution of a money decree rather than a land dispute it is unreasonable for the Applicant to contend that development on the land would result its wastage.

7. He states that the Applicant has equally failed to provide any evidence of willful disobedience or breach of the order of 16.05.2019 by the Respondents or Objector. Reiterating that the proof beyond reasonable doubt is required here to demonstrate that the Respondent is in disobedience of the Court order and that no proof of personal service has been evinced. He concludes by stating that the Applicant's motion is intended to scuttle the pending appeal and Objector's motion dated 14.09.2023, is incompetent and prejudicial to the Respondents and Objector.
8. The Objector equally opposed the Applicant's motion by way of a replying affidavit dated 21.05.2019, the gist of which appears to be a replication of the Respondent's response.
9. In a rejoinder by way of a supplementary affidavit, the Applicant asserted that the replying affidavit does not evince the consent and authority to depose on behalf of his Co-Respondents. That by the responses of the Respondent and Objector it is evident that they were aware of the subject orders but opted to unilaterally interfere with the entries in the title to the suit property. He concludes by stating that if the motion is declined, he will suffer irreparable loss as the decretal sum remains unpaid while the suit property that was preserved for purposes of execution continues to be interfered with.
10. The motion was canvassed by way of written submissions. On the part of the Applicant, counsel having restated the events leadings up to the instant motion submitted as follows. On whether the Respondents could be held in contempt and or whether the death of some of the Respondents exonerates the remaining Respondents from legal liability, counsel relied on Order 30 of the CPR, Section 16,18, 25, 31 & 32 of the Partnership Act, the decisions in *Car & General v Marende t/a Marende & Company Advocates & Another* [2003] 2 EA 384, *Ismail Adam Suleman & Another v Nawaz Transport Company* [1983] eKLR, *Express Connections Limited v Ezekiel Kiarie Kamande* [2016] eKLR and *County Assembly of Kwale v Apollo Muinde Daniel Ngonze trading as Apollo Muinde & Ngonze Advocates* [2017] eKLR . To support his proposition that despite the suit having automatically abated as against the deceased Respondents, the suit could proceed against the firm, judgment having entered jointly and severally against surviving Respondent partners. While emphasizing the judgment, decree and prohibition order, counsel referred to the court's decision conclusively addressing the matter in relation to the Respondents' motion seeking to set aside judgment and attendant proceedings was dismissed.
11. Concerning capacity of the deponent of the replying affidavits, it was posited that the Respondents and Objector have not asserted that authority to was granted by Rajnikant Lakhamshi Shah the same ought to be struck out.
12. Counsel citing Section 3A & 63(c) of the CPA, the decisions in *CM Construction (EA) Limited v Nine Sisters Limited* [2021] eKLR, *Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 Others* [2014] eKLR, *Samuel M. Mweru & Others v National Land Commission & 2 Others* [2020] eKLR, *Kinatwa Sacco v National Transport & Safety Authority* [2019] eKLR, *Republic v Ahmad Abolfathi Mohammed & Another* [2018] eKLR and *Joseph Kabugi Karanja v Benson Mugo Mukunya & 3 Others* [2021] eKLR submitted that the Respondent is in contempt of this Court's order through willful and unilateral alteration of the entry in respect of the Court's order on the suit title; demolition of the building erected on the suit property; and excavation of the suit premises contrary to the express prohibition order . The Court was urged to allow the motion with costs.



13. On the part of the Respondent, counsel submitted that in light of the pending proceedings before the Court of Appeal, this Court should refrain from making any decision or rulings on proceedings that may embarrass the judicial process. Counsel asserting that the instant motion ought to have been filed before the Court of Appeal therefore and urging the court to summarily dismiss the motion. The Indian case of *Kishor s/o Bhikansingh Rajput v Preeti w/o Rajput* (Writ Petition No. 7502 of 2006) and the decision in *Matindi & 3 Others v The National Assembly of Kenya & 4 Others; Controller of Budget & 50 Others (Interested Parties)* [2023] KEHC 19534 (KLR) were cited in that regard. Regarding the competency of the responses filed, counsel cited the decision in *Peter Onyango Onyiego v Kenya Ports Authority* [2004] eKLR, to submit that the deponents asserted their capacity and authority to depose, which has not been controverted.
14. The cases of *Sam Nyamweya & 3 Others v Kenya Premier League Limited & 2 Others* [2015] eKLR, *Mutitika v Baharini Farm Ltd* [1985] KECA 60 (KLR), *Alfred Mutua v Boniface Mwangi* [2022] KEHC 2230 (KLR) and the South African High Court decision in *Kristen Carla Burchell v Barry Grant Burchell, Eastern Cape Division Case No. 364 of 2005* as cited with approval in *Mukuha v Gashwe & 14 Others* [2023] KECA 1482 (KLR) were relied on regarding proof of contempt. By inter alia proving the terms of the order, the Respondent's knowledge of the terms, and failure by the Respondent to comply with the terms of the order.
15. Counsel stating here that the order in question was specific to prohibiting the transfer or charging of the attached suit property and that the Applicant's assertion that developing the attached property constitutes contempt of Court is misguided. He further argued that nothing in the order of 16.05.2019 precluded the Respondents and Objector from carrying out developments on the suit property while the erroneous entry of the order on the suit title has since been rectified. Counsel reiterated depositions to the effect that the issue before the court concerns not title to land but execution of a decree resulting in attachment of the suit property. In conclusion, counsel urged to dismiss the Applicant's motion with costs.
16. As with his response, the Objector's submissions seemed a replication of the Respondents' submissions. Save that counsel pointed out that the Court should refrain from any invitation to deny the Objector the right to be heard by striking out his affidavit in response to an allegation of contempt levelled against him. According to counsel, an examination of the order, facts and evidence presented before the Court, disclose that the Applicant has failed to prove contempt. The decision in *Kimani Gachuhi & Peter Mbuthia Gachuhi v Evangelical Mission for Africa & Cindy Sanyu Okova* [KECA] 270 (KLR) was relied on.
17. The Court has considered the lengthy rival affidavit material and submissions in respect of the motion, as well as the record herein. While the application for determination is a contempt motion, the parties' respective affidavit material canvassed fringe issues and raised technical objections with the tendency of obfuscating the real issue in controversy, namely, whether the Respondent and Objector are guilty of contempt of this Court's order issued on 16.05.2019.
18. In addressing the preliminary contestations raised by the respective parties the court notes as follows. Firstly, as to whether this Court is properly seized of the matter, it is this Court's reasoned deduction that notwithstanding the Court of Appeal proceedings and or appeal challenging the order of execution, this Court can deal with the contempt application. On the question of competency of the respective responses it is undisputed that the Respondent is a business name, on accord of its ex facie description in the pleadings before the Court.
19. Applying here mutatis mutandis the provisions of Order 4 Rule 1(4) as read with Order 9 Rule 2 of the CPR, where a number of people are trading using a business name, the person acting or deposing



any affidavit on behalf of the business should demonstrate that he is duly authorized to so act on behalf of the others. See Court of Appeal decision in Kenya Trypanosomiasis Research Institute v Anthony Kabimba Gusinjilu [2019] KECA 240 (KLR). The Respondents' affidavit at paragraph 1 & 2 states; -

- “ 1. That I am one of the Defendant/Respondents herein and therefore competent to swear this affidavit.
2. That I have the authority of my co-Defendants to swear this affidavit on their behalf and on my own behalf.”

20. As held in Makupa Transit Shade Limited & Mat International Limited v Kenya Ports Authority & Multiple ICD (K) Limited [2015] KECA 721 (KLR) as cited with approval in Kenya Trypanosomiasis Research Institute (supra) that the provisions of Order 4 Rule 1(4) and Order 9 Rule 2 of the CPR should not be invoked as a procedural technicality to strike out suits or pleadings, particularly where no evidence was produced to demonstrate that the officer or deponent was unauthorized. However, it is imperative for the deponent to an affidavit sworn on behalf of a corporation or individuals trading as a business name to state that he/she is duly authorized to depose. Nevertheless, as settled by the Court of Appeal in Arthi Highway Developers Limited v West End Butchery Limited & 6 others [2015] eKLR, upon the assertion on oath by Pratima Lakhasmshi Shah on his capacity and authority to depose, the evidentiary burden shifted on the Applicant to tender evidence to the contrary. The Applicant failed to pick up the gauntlet on the issue, and therefore the objection must fail.

21. Moving on to the merits of the motion, alongside the provisions of the Contempt of Court Act, that was declared unconstitutional by in the case of Kenya Human Rights Commission v Attorney General & another [2018] eKLR, the Applicant has relied on Section 3A & 63(c) of the CPA in advancing his motion. The former provision reserves the inherent power of the Court “to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the Court”. The former provision was addressed by the Court of Appeal in Rose Njoki King'au & Another v Shaba Trustees Limited & Another [2018] eKLR, therefore the same would require no restatement here. Meanwhile, Section 63(c) of the CPA provides that: -

“In order to prevent the ends of justice from being defeated, the Court may, if it is so prescribed—

- (a)
- (b)
- (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold;
- (d)
- (e)

22. Arising from the declaration of unconstitutionality of the Contempt of Court Act, ordinarily applications for contempt are ideally brought pursuant to Section 5 of the Judicature Act as read with 3A of the CPA. Section 5 of the Judicature Act provides that; -

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



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

23. Black’s Law Dictionary (Ninth Edition), defines contempt of court as “conduct that defies the authority or dignity of a court.” The Court of Appeal in *Christine Wangari Gachege (supra)* held that in punishing contempt, the Court exercises ordinary criminal jurisdiction. In *Stewart Robertson v Her Majesty’s Advocate, 2007 HCAC 63* it was stated that:

“Contempt of Court is constituted by conduct that denotes willful defiance of or disrespect towards the Court or that willfully challenges or affronts the authority of the Court or the supremacy of the law, whether in civil or criminal proceedings.”

24. The Supreme Court of Kenya in *Ahmad Abolfathi Mohammed* case explained why Courts punish contempt as follows: -

“(24) In *Econet Wireless Kenya Ltd v. Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828 Ibrahim J* (as he then was) relied on the Court of Appeal decision in *Gulabchand Popatlal Shah & Another Civil Application No. 39 of 1990* (unreported), where the Court of Appeal stated as follows:

“It is essential for the maintenance of the Rule of Law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors... In *Hadkinson v. Hadkinson (1952) 2 All E.R. 567*, it was held that:

It is the plain and unqualified obligation of every person against or in respect of whom an order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void.”...

(26) The Court of Appeal in *A.B. & Another v R.B., Civil Application No. 4 of 2016 [2016] eKLR* cited with approval the Constitutional Court of South Africa’s decision in *Burchell v. Burchell, Case No.364 of 2005* where it was held:

“Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. The Constitution states that the rule of law and supremacy of the Constitution are foundational values of our society. It vests the judicial authority of the state in the court and requires other organs of the state to assist and protect the court. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. Failure to enforce court orders effectively have the potential to undermine confidence in recourse to law as an



instrument to resolve civil disputes and may thus impact negatively on the rule of law.”...

(28) It is, therefore, evident that not only do contemnors demean the integrity and authority of Courts, but they also deride the rule of law. This must not be allowed to happen...”

25. The Supreme Court proceeded to explain the rationale for the high standard of proof of contempt as follows:

“[28] ...We are also conscious of the standard of proof in contempt matters. The standard of proof in cases of contempt of Court is well established. In the case of *Mutitika v. Baharini Farm Limited* [1985] KLR 229, 234 the Court of Appeal held that:

“In our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature.”

[29] The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor’s conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the Court Order.

[30] The question that begs an answer, thus, is: did the applicant willfully disobey this Court’s Orders?”

26. The two related ingredients of willful disobedience and knowledge of the order are critical in a successful contempt proceeding. In the past, it was held by superior Courts that for an applicant to succeed in contempt proceedings, he must prove personal service of the subject order and the attendant penal notice upon the alleged contemnor. See the Court of Appeal decision in *Nyamodi Ochieng Nyamogo & Another v Kenya Posts & Telecommunications Corporation* [1994] KECA 114 (KLR). However, in recent years, superior Courts have stated that where the applicant is able to demonstrate awareness by such alleged contemnor of the subject orders and not necessarily personal service of the order upon the contemnor, such awareness is sufficient. See *Kenya Tea Growers Association v Francis Atwoli & 5 others* [2012] KEHC 2747 (KLR).

27. Notably, the Courts emphasize the high degree of proof required and reiterating the exhortations in *Mutitika* (supra), that:-

“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable



doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature.

However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the party of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and or an application to commit made, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.”

28. In this case there is no dispute that an order was issued on 16.05.2019 by Kamau, J. in respect Applicant’s motion dated 08.05.2019. Presently, the court will address the question whether the order was served upon the Respondents and Objector or that they were aware of the said order. It is equally not apparent that despite the said order, there is ongoing activity on the suit property either by way of development or otherwise as asserted by the Applicant. A matter undisputed by the Respondent and Objector. (See annexures marked AAS-3(a), AAS-3(b), AAS-3(c), AAS-6, AAS-7 & AAS-9).
29. The Respondent’s and Objector’s answer as I understand it is that first, the order in question only prohibits the transfer and charging of the suit property but does not preclude the Respondent from carrying out developments on the suit property. Secondly the order in question in respect of the decree of this Court relates to payment of a decretal sum and not a disposition of interest of land. Thirdly, that contempt of Court being is quasi-criminal in nature, the Applicant has failed to provide evidence of willful disobedience or breach of the order of 16.05.2019 by the Respondent or Objector. At the risk of repetition, the two ingredients key to a finding of contempt are knowledge of the order and willful disobedience.
30. From the record, a judgment of this Court was delivered in favour of the Applicant on 06.04.2016 and following which the Applicant moved to attach the suit property in execution of the Court’s resulting decree. By a motion dated 08.05.2019, the Applicant sought an order prohibiting the judgment debtor from transferring or charging the suit property in any way and all persons from taking any benefit from such purported transfer or charge of the suit property pending hearing and determination of the said application.
31. When the motion came up before Kamau, J. on 16.05.2019, upon hearing representation from counsel for the Applicant she proceeded to state as follows;-

“It is now 12.41pm and there is no attendance by the Defendants and /or their Advocates M/ S E.W. Kamuyu & Co. Advocates despite being served as endured in the affidavit of service of Aggrey Mutiemberi Asumba that was sworn and filed on 13th May, 2019.

I have noted that the said Advocates accepted service of the hearing notice under protest on the grounds that their clients collected files from them and they do not know their whereabouts. The said Advocates have not filed an application to cease acting for the Defendants and for all purposes and intents, they are deemed to be the Defendant’s Advocates on record.



There is no response to the Plaintiff's application making it unopposed. Although Mbogholi Msagha J. directed on 9th May, 2019 that any Judge in the Civil Division could hear and determine this matter.

Following directions that were given pursuant to the Plaintiff's Advocates letter dated and filed on 15th May, 2019 to the Deputy Registrar High Court of Kenya Civil Division, this matter was allocated to me for hearing.

Accordingly, having looked at the Plaintiff's Notice of Motion Application dated and filed on 9th May, 2019 and the supporting affidavit of Azim A. Sameja and all the enclosures therein and having heard his Counsel and having noted that the said Application is unopposed as no response has been filed thereto by the Defendants, I hereby allow the same in terms of prayer No. (2) therein. Costs shall be in the cause. Orders accordingly."

32. As a result of the proceedings before Kamau, J. an order was extracted (annexure marked AAS-1). It was to the following effect:

"It is hereby ordered: -

1. That the Judgment debtors be and are hereby prohibited from transferring or charging the property in any way, and all persons from taking any benefit from such purported transfer or charge of LR. No. 209/5802 I.R 16373 pending hearing and determination of this application.

PARAGRAPH 2.

That costs shall be in the cause." (sic)

33. Subsequently, the Applicant through counsel caused the said order to be registered on 07.06.2019 as against the title to the suit property. (annexure marked AAS-2). The Applicant did not demonstrate his assertion here that registration of the order was done after service upon the Respondent's advocate. Or that subsequent to the proceedings of 16.05.2019, the order was served or was brought to the knowledge of the Respondent and or Objector whose counsel was absent during the material proceedings. However, the issue would appear moot given that by their depositions Respondent and Objector do not dispute awareness of the order.
34. As to whether there was willful disobedience of the said order, the Court must proceed cautiously in order not to embarrass the related proceedings before the superior Court. It is not in dispute that Serگون J.'s ruling dated 17.05.2022 (annexure marked AAS-10) in respect of the Objector's motion challenging attachment of the suit property has since been appealed before the Court of Appeal (annexure marked JLS-7). That said, and as rightly argued by both the Respondent and Objector, the specific purport of the order dated 16.05.2019 in respect of the suit property was a prohibition order preventing the transfer or charging the suit property in any way, and all persons from taking any benefit from such purported transfer or charge of the suit property pending hearing and determination of the application. The Applicant's motion dated 08.05.2019 giving rise to the order of 16.05.2019, did not seek any other substantive reliefs of a futuristic nature. Thus, upon Kamau, J. issuing the said order, the motion stood spent and it appears doubtful that the orders issued could subsist ad infinitum, despite being temporary in nature, as implied by the present motion.
35. That said, the purport of the order is apparent; the Respondent was restrained from transferring or charging the suit property, nor was any party to benefit from such transfer or charge of the suit property pending the determination of the Applicant's motion dated 05.05.2019. In the Court's view therefore,



despite the Applicant's deposition regarding alleged willful disobedience per material in annexures marked AAS-3(a), AAS-3(b), AAS-3(c), AAS-6, AAS-7 & AAS-9, the Applicant has not demonstrated that the Respondent or Objector have contrary to the terms of the order attempted to transfer, charge or benefited from a transfer or charge of the suit property. And in any event, it is questionable whether a valid order capable of being disobeyed is extant.

36. Consequently, the court finds that the motion dated 8.04.2024 is not only premised on an apparently obsolete order, but is also without merit and must fail. The motion is hereby dismissed with costs to the Respondents and Objector.

DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 20TH DAY OF DECEMBER 2024.

C. MEOLI

JUDGE

In the presence of

Mr. Omondi for the Applicant

Ms Maganda holding brief for Ms Otto for the Respondents &

Holding brief for Ms Owuor for Ms MOgine for the Objector:

C/A: Erick

