



**Recon Suppliers Limited v Koinange & 2 others; Royal Gardens Limited
& 2 others (Interested Parties) (Environment and Land Miscellaneous
Application E273 of 2022) [2023] KEELC 18076 (KLR) (30 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 18076 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E273 OF 2022

JA MOGENI, J

MAY 30, 2023

**IN THE MATTER: CONTEMPT APPLICATION TO
CITE THE DEFENDANTS FOR CONTEMPT OF COURT**

AND

IN THE MATTER: SECTION OF THE JUDICATURE ACT CAP 8 OF THE LAWS OF KENYA

BETWEEN

RECON SUPPLIERS LIMITED CLAIMANT

AND

BARBARA WAMBUI KOINANGE 1ST DEFENDANT

HARRISON KIHARA T/A HARIKI AUNCTIONEERS 2ND DEFENDANT

PETER GICHUKI T/A GICHUKI KING'ARA & CO.

ADVOCATES 3RD DEFENDANT

AND

ROYAL GARDENS LIMITED INTERESTED PARTY

ROYAL MATTRESSES INTERESTED PARTY

POWER LIF KARDI EAST AFRICA LIMITED INTERESTED PARTY

RULING

1. I have before me an application and a Notice of Preliminary Objection for determination. The Plaintiff filed a Notice of Motion Application dated 23/11/2022 which was brought pursuant to Section 5 of the *Judicature Act*, Cap 8 of the Laws of Kenya, Section 1A, 1B and 3A of Civil Procedure (Amendment No.2) Rules 2012 and all enabling laws. The Applicant is seeking for the following orders: -



- i. Spent
 - ii. That this Honorable Court be pleased to cite (i) Barbara Wambui Koinange; (ii) Harison Kihara t/a Hariki Auctioneers; and (iii) Peter Gichuki King'ara t/a Gichuki King'ara & Company Advocates for willful disobedience of the Orders of the Business Rent Tribunal issued on 2nd September 2022 and varied on 6th September 2022.
 - iii. That this Honorable Court be pleased to issue a warrant of arrest against; (i) Barbara Wambui Koinange; (ii) Harison Kihara t/a Hariki Auctioneers; and (iii) Peter Gichuki King'ara t/a Gichuki King'ara & Company to be brought before this Honorable Court to show cause why they should not be punished for contempt of the Orders of the Business Rent Tribunal issued on 2nd September 2022 and varied on 6th September 2022.
 - iv. That this Honorable Court be pleased to commit to civil jail for 6 months or such other period as the court may deem fit; (i) Barbara Wambui Koinange; (ii) Harison Kihara t/a Hariki Auctioneers; and (iii) Peter Gichuki King'ara t/a Gichuki King'ara & Company for contempt of the Orders of the Business Rent Tribunal issued on 2nd September 2022 and varied on 6th September 2022.
 - v. That (i) Barbara Wambui Koinange; (ii) Harison Kihara t/a Hariki Auctioneers; and (iii) Peter Gichuki King'ara t/a Gichuki King'ara & Company be condemned to purge the contempt by returning to the Claimant the goods unlawfully sold or in lieu thereof pay to the Claimant the sum of Kesh 462,530.00.
 - vi. That this Honorable Court be pleased to make such further orders or directions as the circumstances of this case may permit.
 - vii. That the Defendants be condemned to pay the costs of this Application.
2. The Grounds on the face of the Application are set out paragraphs 1 to 7.
 3. The Application is supported by the affidavit of Harishchandra Gupta the director of the Claimant Company sworn on 23/11/2022 and a Further Supporting Affidavit sworn on 15/12/2022.
 4. Terming the Application as misconceived and incompetent, before the Notice of Motion Application could be heard, the 3rd Defendant raised a Preliminary Objection dated 24/01/2023 and a Notice to Strike Out the Affidavit of the 1st Interested Party and argued that the 1st Interested Party had no living director the sole director having died. That Susan Wanjiku Kahonge not being a director had no power to initiate a suit on behalf of the 1st Interested Party.
 5. The Notice of Preliminary Objection dated 24/01/23 while objecting to the application raised the following points of law:-
 - i. That the Application is neither a chamber summons, originating summons or notice of motion and is unknown to Law.
 - ii. That leave to apply for the filing of contempt proceedings has not been applied for nor granted.
 - iii. That the Defendant did not comply with the mandatory provisions of the Rules of the Supreme Court (R.S.C.) Order 52 Rule 52(2) (2) in that it did not file an application for leave nor a statement setting out the name and description of the Applicant, the name and address of the person sought to be committed and the ground on which his committal is sought.



- iv. That the applicant did not file such statement as in (1) above and an affidavit verifying the facts relied on with the Registrar of the High Court before making of the Application to this Honourable Court in accordance with the mandatory requirements of the Rules by the Supreme Court Order 52(2) (2).
 - v. That the Applicant did not give notice of the application for leave and/ or lodge together therewith copies of the statement and the verifying affidavit not later than the proceeding day with the Attorney General's chambers and/or the Registrar of the High Court as required by the Mandatory Provision of the Rules of the Supreme Court, Order 52(2) (3).
 - vi. That application is procedurally defective and incompetent having been brought through no known procedure.
 - vii. That the Applicant has not complied with the Mandatory Provision of Order 52 (3) (3) of the Supreme Court Rules in that no Notice of Motion accompanied by a copy of the statement and affidavit in support of the application for leave under order Rule 2 has been served personally on all the persons sought to be committed for contempt herein.
 - viii. That the order complained of was obtained ex-parte and has never been served on the third defendant.
 - ix. That the 3rd defendant was not a party in the proceedings in the Business Premises Rent Tribunal and was not required to do anything by any order.
 - x. That no penal Notice has ever been served upon the Respondent prior to leave being obtained herein or at all.
 - xi. That neither the Application nor the supporting affidavit contains any grounds or objection against the 3rd defendant.
 - xii. That the 3rd defendant is not a party to this suit and therefore the order sought cannot be granted by this Honourable Court prior to his joinder.
 - xiii. That the application is incompetent, misconceived and brought to settle personal scores.
 - xiv. That the orders of the Tribunal as issued were fully complied with.
6. The Preliminary Objection is grounded on the various pleadings, the record of proceedings in BPRT E781 of 2022 and the Replying Affidavits of the 1st and 3rd defendants both sworn on 15/12/2022 and a further supporting affidavit sworn by the 1st defendant on even date.
 7. In opposition to the Notice of Motion dated 23/11/2022, the 1st Defendant swore a Replying Affidavit dated 15/12/2022 and stated that she was part owner of the parcel LR No. 209/22 having inherited from her late grandfather and she owns 30 acres at Close Burn Estate and has leased to various tenants including the claimant and the Interested Party. She denied that the proclamation was illegal since the Claimant owed Kesh 14,835,000 in rent arrears. That the 1st Interested Party filed an ex parte application on 1/9/2022 seeking injunctive orders and release of the proclaimed goods and that the 1st Interested Party relied on an expired lease agreement dated 1/08/2011 to which the 1st Defendant was not a party to. Further that she never instructed Royal Mattresses Limited and Prim Gold Properties to act for her or collect rent for her and therefore she does not know why if at all the 1st Interest Party paid rent to the two companies.



8. She urged the court to dismiss the Application for being frivolous and vexatious. She stated that it is procedurally defective since no Notice of Penal Consequences was served and there is no reference that she nor her advocate was served. She avers that the Application violates Order 52 (2) (2) of Supreme Court Rules and Order 52 (3) (3) and Order 52 (2) (13) of Supreme Court Rules Finally that there was no order restraining the 1st Defendant or her agent from auctioning or selling the assorted metals and she had no obligation to preserve the attached goods.
9. Similarly, the 3rd defendant, Peter Gichuki Kingara swore a Replying Affidavit dated 15/12/2022. He denied ever being a party to BPRT E273/ 2022 as evidenced by copies of pleadings annexed as “P.G.K-1”. That he has read the Application and noted that apart from enjoining his name there is no particular ground showing that he disobeyed any order of the Tribunal which did not concern him personally and yet he was away on a Caribbean cruise and he termed the application as “hot air”.
10. He averred that none of the Tribunal Orders were disobeyed by any of the defendants since the 2nd defendant upon issuance of the ex parte mandatory injunction moved the Tribunal for a variation of the Order and the Mandatory Injunction was stayed by the Chairman who only ordered that the vehicle/lorry not to be sold but no order stayed the sale of the assorted metals which the auctioneer proceeded to sell he attached copies of the varied order as “P.G.K-2”.
11. At the same time the advocate for the Respondents has file a Notice to Strike Out Affidavit of the 1st Interested Party dated 26/01/2023. He contended that the 1st Interested Party being a limited liability company lost its sole director on 3/04/2021 and that the deponent Susan Wanjiku Kihonge is not a director and thus has no legal power to initiate any suit on behalf of the 1st Interested Party.
12. On 21/02/2023, the Court directed that both the Preliminary Objection dated 24/01/2023 and the Application dated 23/11/2022 be canvassed together through written submissions. Both parties filed their submissions which I have considered. A ruling date was thereafter reserved.

Issues for Determination

13. I have given full consideration to the application before me as well as the Notice of Preliminary Objection. I have equally perused and considered the submissions as filed by the Plaintiff in regard thereto. I find the following issues arise for determination: -
 - i. Whether the Preliminary Objection raises pure points of law.
 - ii. Whether the respondents were in contempt of Court and if yes is the claimant/applicant entitled to recover the special damages claimed to have suffered from noncompliance of the Court order by the contemnors?
 - iii. Whether the Application dated 23/11/2022 is merited.

Analysis and Determination

Whether the Preliminary Objection raises pure points of law.

14. I need to dispose of the preliminary objection first before considering the application on merit should it become necessary. In the case of Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 others (2014) eKLR, the Supreme Court stated as follows on preliminary objections:

“To restate the relevant principle from the precedent setting case, Mukisa Biscuit Manufacturing Co. Ltd. v West End Distributors (1969) EA 696.



‘a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that parties are bound by the contract giving rise to the suit to refer the dispute to arbitration a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is exercise of judicial discretion.’

15. In the case of *Oraro v Mbaja* [2005]1KLR141, it was held that:

“A preliminary objection correctly understood is a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not as a matter of legal principle, a true preliminary objection which the court should allow to proceed. The court’s discretion is never exercised just on the basis of propositions of law; there must be a factual situation of which the court takes cognizance, and in relation to which its equitable conscience is exercised.”

16. For a preliminary objection to succeed the following tests ought to be satisfied: Firstly, it should raise a pure point of law; secondly, it is argued on the assumption that all the facts pleaded by the other side are correct; and finally, it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. A valid preliminary objection should, if successful, dispose of the suit.
17. The 2nd Respondent impugns the capacity of the 1st Respondent herein who is said to be deceased. The legal capacity of a party in any legal proceeding is critical point of law that goes to the root of any suit. A party must have capacity to sue and or be sued. It is trite that Court proceedings cannot be sustained against a deceased Defendant and in the event of his demise, an Application for substitution must be done; if the cause of action survives him/her.
18. As already been stated, one of the preconditions for a valid preliminary objection is based on the assumption that the facts pleaded are correct and unopposed by the rival party. With regard to the 3rd Defendant’s Preliminary Objection dated the 23/01/2023, the ground is that the suit is devoid of merit on account that the Applicant is seeking to have the 3rd Party who was not a party to the suit in the Tribunal to be held to be in contempt of Court yet he was not a party to the proceedings at the Tribunal.
19. Now, in my view and with the greatest of respect, this objection calls upon this Court to inquire of the pleadings to ascertain whether or not the 3rd Defendant was a party or not in the Tribunal. Equally the Court will have to inquire into evidence to find out if he has an accrued right capable of protection by the Court.
20. Further the Preliminary Objection invites court to find that the orders of the Tribunal as issued were fully complied with and for this to be done court has to make reference to facts that are disputed by both parties. The court cannot from the face of the preliminary objection, conclude that the suit reveals no cause of action. There is need to consider factual evidence and court will exercise its judicial discretion. Once court steps out of the Preliminary objection, it ceases to be a point of law and cannot be sustained.
21. Given the foregoing, with regard to the Preliminary Objection, it is the finding of the Court that the same is unmerited and it is for rejection.



22. I shall now determine the Applicant's Notice of Motion dated the 23/11/2022. The Applicant sought orders to have respondents cited for contempt for disobeying lawful court orders. evict the Respondents and the Interested Party.
23. I have considered the application, response thereto, submissions by counsel for the parties and the decisions cited. Parties have addressed numerous issues in this application that are not necessary at this stage. This is so because what is before court is an application to cite the respondent for contempt of court. The applicants' case is that the 1st and 2nd respondents violated this Tribunal's Order issued on 2/09/2022 and varied on 6/09/2022 directing the respondents not to unlawfully or interfere with the tenancy activities of the 1st Interested Party. The 2nd respondent was also restrained from selling the motor vehicle or goods pending the inter partes hearing.
24. The claimant/applicant has stated that the Business Premises Rent Tribunal issued orders on 2/09/2022 restraining the 2nd defendant from selling and or alienating motor vehicle registration number KBV 562E but also directing him to release the motor vehicle and all the other attached goods to the claimant/applicant, a copy of the court order marked "HG1" was attached. At the same time on 6/09/2022 the 1st and 2nd defendant moved the BPRT and obtained a variation of the orders of 2/09/2022 and the motor vehicle with the goods were to be preserved pending further orders of the Tribunal. The claimant/applicant further states that the 1st and 2nd defendant/respondents had knowledge of the Orders of 6/09/2022 having been issued following an application filed under their hands. As such they have sought to cite the respondents for contempt of court for disobedience of that order.
25. The respondents have also sued the 3rd defendant but no information about his action of disobedience of the same orders has been elaborated in the application.
26. The respondents including the 3rd defendant have denied violating the orders of the Tribunal as alleged. They have also stated that they were not served with the court order. The 3rd defendant claims to have been away in the United States between 22/09/2022 to 14/10/2022. The service upon the 3rd defendant has been disputed the claimant did not place any evidence before the court to suggest otherwise. The claim against the 3rd defendant of contempt is also not elaborated. In the absence of service upon him of the order or evidence that he was aware of the same, I am of the view that it would be unsafe to say that he defied the order in question. In the circumstances, even if I had made a finding that the 3rd Defendant had been served with the court order aforesaid, I would not have found him guilty of contempt of court in the absence of service of the application upon him.
27. I have considered the Affidavits on record, the submissions of counsel and authorities relied on. Therefore, the issue I need to address is whether the respondents were in contempt of court and if yes is the applicant entitled to recover the special damages claimed for non-compliance of the Court Order by the contemnors?
28. The Black's Law Dictionary (Ninth Edition) defines contempt of court as:-

"Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment."
29. The power to deal with contempt of Court is provided for under Section 5 of the [Judicature Act](#) (Cap 8). Section 5 of the [Judicature Act](#) provides: -
- 30.



“5.

(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 that power shall extend to upholding the authority and dignity of subordinate courts.”

32. Properly put, contempt is conduct that impairs the fair and efficient administration of justice. Section 5 of the *Judicature Act* confers jurisdiction on the superior courts to punish for contempt.
33. This an application is brought under Rule 81.4 (breach of judgement, order or undertaking) now referred to as "application notice" (as opposed to a notice of motion) which correct rule and for this the application notice must set out fully the grounds on which the committal application is made and must identify separately and numerically, each alleged act of contempt and be supported by affidavit(s) containing all the evidence relied upon.
34. Whereas the respondents have submitted that the applicant needed to seek leave to bring this application, in *Christine Wangari Gacheche vs Elizabeth Wanjira Evans & Others Civil Appeal 221 of 2007* the Court of Appeal correctly pointed out that leave, now called "permission" is not required where committal proceedings relate to a breach of a judgement, order, or undertaking.
35. The Court of Appeal after evaluating the Rules, concluded that "we find that on the basis of the new Civil Procedure Rules (of England) contained in the Second Supplement to the 2012 White Book, no leave is required before bringing an application, like the one before us, for committal for contempt relating to breach of this court's order..." On that basis, I find that it was not necessary for the applicant to seek leave before filing this application, hence this application is properly before the court.
36. The reason why courts punish for contempt is to uphold the dignity and authority of the court, ensure compliance with directions of the court, observance and respect of due process of law, preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice by courts. Without sanctions for contempt, there would be a serious threat to the rule of law and administration of justice. For a party to be cited for contempt, he must have violated and or disobeyed an order that was directed at him.
37. The contempt power (both in its civil and criminal form) is so innate in the concept of jurisdictional authority that a court that could not secure compliance with its own judgments and orders is a contradiction in terms, an "oxymoron.". Ronald Goldfarb made the following observation about contempt power in his book, *The History of the Contempt Power*, 1 Wash. U. L. Q. 1, 2 (1961): "is inherent in courts, and automatically exists by its very nature."
38. The application before court seeks to have the respondents cited for contempt of the BPRT's order of 2/09/2022 and varied on 6/09/2022 and to be committed him to civil jail and or fined as the court may deem fit. The applicants further pray that the respondent be directed to purge their contempt by complying with that court order.
39. Justice Ibrahim J., (as he then was) dealing with the question of contempt in *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, underscored the importance of obeying court orders, stating:

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. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the 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 the order believes it to be irregular or void. (emphasis).

40. In *T. N. Gadavarman Thiru Mulpad v Ashok Khot And Anor* [2006] 5 SCC, the Supreme Court of India also emphasized on the dangers of disobeying Court orders, thus:

“Disobedience of this Court’s order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court’s orders are to be followed and complied with”.

41. Contempt of Court is in the nature of criminal proceedings and, therefore, proof of a case against a contemnor is higher than that of balance of probability. This is because liberty of the subject is usually at stake and the applicant must prove willful and deliberate disobedience of the court order, if he were to succeed. This was aptly stated in *Gatharia K. Mutikika v Baharini Farm Limited* [1985] KLR 227, 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, 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.

42. Due to the gravity of consequences that ordinarily flow from contempt proceedings, it is proper that the order be served and the person cited for contempt should have had personal knowledge of that order.
43. The claimant/applicant deposed that the order made on 6/09/2022 was issued following an application filed by the 2nd respondent. I have perused the application dated 23/11/2022 and the affidavit in support. I have noted that the Order made on 2/09/2022 was served upon the 1st and



2nd respondents and an affidavit of service dated on even date is attached and marked as “HG3”. It is therefore clear that the 1st and 2nd respondent were served with the court order; and they were aware of its terms and that as a result they moved to court to have the order varied as per the application dated 5/09/2022. This is evidence placed before this court that the 1st and 2nd defendants willfully and deliberately disobeyed the court order that was served upon them.

44. The Order dated 6/09/2022 stayed the execution of Order No. 3 of the Order dated 2/09/2022 which read as follows:

“The 2nd Respondent Hariki Auctioneers to release the said motor vehicle Registration No. KBV 562E back to the 2nd Interested Party and all the other property/goods if any has been attached from the Auctioneers premises pending the hearing of the application inter partes”.

45. In his pronouncement the chairman stayed the execution of order No. 3 pending hearing of the application inter partes and he also stated “The Auctioneer is further ordered.”(emphasis mine) ordered not to dispose of the motor vehicle....” The Black’s Law Dictionary defines “Further Instructions” additional instructions that are given. It follows that the Order of 5/09/2022 gave additional instructions. That the court stayed execution of Order No. 3 of the Order dated 2/09/2022 and additionally stopped the auctioneer from disposing of the vehicle.

46. The 3rd respondent’s claim that he was not personally served with the court order 2/09/2022 cannot stand as put by Lenaola J in Basil Criticos v Attorney-General and 8 Others [2012] eKLR it was held: -

“.....the law had changed and as it stands today knowledge supersedes personal service.....where a party clearly acts and shows that he had knowledge of a court order; the strict requirement that personal service must be proved is rendered unnecessary.”

47. It is now trite law therefore that service of the judgment or order alleged to have been breached and the penal notice served upon the advocate representing the person being charged with the contempt of court is sufficient service unless it can be proved that the advocate did not notify the client. The Court of Appeal had the following to say on this subject in the case of Shimmers Plaza Limited v National Bank of Kenya Limited Civil Appeal No. 33 of 2012: -

“There is an assumption which is not unfounded and which in our view irrefutable to the effect that when an advocate appears in court on instructions of a party, then it behoves him/her to report back to the client all that transpired in court that has a bearing on the client’s case. This is the position in other jurisdictions within and outside the common wealth.”

48. When the above ingredients are applied to the scenario herein, the court is satisfied that there is violation because:-

- i. The respondents invoked the due process of the court, and when a second order was issued by the Tribunal under their own instigation, they chose to partially obey the said orders caused the sale of the attached goods of the applicant.
- ii. Their indifference in the wake of the clear orders of court amount to nothing but impunity and flagrant disobedience and flouting of the law and disrespect to the dignity of the court.

49. On the remedies available, in addition to case law cited by the parties, the court has had occasion to also consider some decisions made in relation to the subject matter. In the case of Elite Studios Limited And Another Versus Intercontinental Hotels Corporation Ltd. Nairobi Hcc No. 483 Of 2005., the court



referred to the case of Satish Kumar Versus Samuel Magua Nariboi, Hccc No. 188 Of 1994 Olekeiwa J. (as he then was) made the following observations:-

“I respectively agree with Justice Akiwumi that contempt of court has to be swiftly punished in order to uphold the fundamental tenet of the rule of law that court orders must be obeyed. . . . It is usually said that committal to jail for contempt of court is an act of last resort. But in a deserving case a court will not hesitate to impose such custodial sentence to punish such contempt.”

50. In the same case the court referred to the reasoning of Musinga J, (as he then was) in the case of P. N. Njoroge J. M. Wambie And Another, The Registered Trustees, New Testament Church Of God Versus Reverend Musa Njuguna T/A Charismatic Revival Network, The Registered Trustees And Musa Njuguna Ministries Nakuru Hcc No. 247 “A” Of 2004 where he stated as follows: -

“The rule of law and order which we all subscribe to requires that orders of our courts be respected and obeyed and that duty equally applies even where a party is dissatisfied with an order and has appealed to an appellate court against the order, ruling or judgment. Contemnors undermine the authority and dignity of our courts and must be dealt with far much so that court authority is not brought into disrepute.”

51. Further, in the case of Refrigerator and Kitchen Utensils Ltd. Versus Sulab Charnd Popat T/A Shah And Others, Nairobi, CA Nairobi 39 Of 1997, the court stated as follows:

“the maintenance of the rule of law and good order, that the authority and dignity of our courts are upheld at all times. This court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proven contemnors.”

52. The court went on to stated that:

“on the last question of remedies, essence and ultimate benefit, the finding of the court, is that the court, has a discretion to decide on the appropriate remedy to be given. . . . further since the orders alleged to have been breached were of this court; this same court is the proper machinery for redressing that breach lastly this court too is the ultimate beneficiary of obedience to court orders and as such it has a duty to ensure that the authority of the court is upheld at all times. It does this employing a very simple but drastic tool of enforcing contempt proceedings to the letter where proven.” Herein contempt of court orders has been proven, and vindication of that breach is called for from this court.

53. For the reasons given and in the circumstances, it is true that the respondents were aware of orders of stay notwithstanding other orders for release of motor vehicle. By proceeding with the sale of the attached goods, the 1st and 2nd respondents were in contempt of the Tribunal’s orders and I find them so and cite them for contempt accordingly. Therefore, the final orders of this court on the applicant’s/ claimant’s application dated 23/11/2022 are as follows: -

- I. That I cite Barbara Wambui Koinange; and Harison Kihara t/a Hariki for willful disobedience of the Orders of the Business Rent Tribunal issued on 2nd September 2022 and varied on 6th September 2022.
- II. That Barbara Wambui Koinange; and Harison Kihara t/a Hariki Auctioneers; condemned to purge the contempt by paying the Claimant the sum of Kesh 462,530.00 in lieu of the sold goods.



- III. That that each of the persons named in one above is fined Kshs.100,000.00 each in default each to serve 6 months imprisonment in jail.
- IV. The fines in number 2 above to be paid within 30 days from the date of the making of this order.
- V. In default of number 3 above each of the persons named in number 1 above to be arrested immediately and then committed to jail to serve the 6 months' jail ordered.
- VI. Each party will bear its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF MAY 2023.

.....

MOGENI J

JUDGE

IN THE VIRTUAL PRESENCE OF:-

Mr Otwal for 1st Interested Party

Mr Kingara for Respondent

Mr Odera for 2nd Interested Party/Applicant

Ms. Caroline Sagina : Court Assistant

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MOGENI J

JUDGE

