



REPUBLIC OF KENYA



Hasham Lalji Properties Limited & 3 others v Lalji & 2 others; Njoroge & 5 others (Applicant); Karanja (Interested Party) (Civil Case E148 of 2019) [2022] KEHC 13291 (KLR) (Commercial and Tax) (22 September 2022) (Ruling)

Neutral citation: [2022] KEHC 13291 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E148 OF 2019
WA OKWANY, J
SEPTEMBER 22, 2022**

BETWEEN

**HASHAM LALJI PROPERTIES LIMITED 1ST PLAINTIFF
HASHAM LALJI AND SONS LIMITED 2ND PLAINTIFF
DIAMOND HASHAM LALJI 3RD PLAINTIFF
AHMED HASHAM LALJI 4TH PLAINTIFF**

AND

**SULTAN HASHAM LALJI 1ST DEFENDANT
BAHADURALI LALJI 2ND DEFENDANT
ESTATE OF ESMAIL H. LALJI NURAHI 3RD DEFENDANT**

AND

**SAMUEL NGUGI NJOROGE APPLICANT
BONIFACE GACHAU KARIUKI APPLICANT
PAUL MAINA KAROBIA APPLICANT
JOHN NDEGWA GICHUHI APPLICANT
NAHASHON KAMAU APPLICANT
CHARLES NJUGUNA APPLICANT**

AND

PAUL MBURU KARANJA INTERESTED PARTY



RULING

1. This ruling is with respect to the application dated November 19, 2020 by the applicant seeking the following orders:-
 - a. Spent
 - b. Spent
 - c. This Honorable Court do find the following proposed contemnors/respondents to be guilty of contempt of the court order dated February 10, 2020 and more particularly order number 2(b), (h) (j) and (k) thereof;
 - 1) Sedco Consultants Limited
Estate Agents
 - 2) Emmy Jepkorir
Director/Shareholder
 - 3) Paul Kiprotich Rutto
Director
 - 4) De Eden Limited thro'
Shareholder
 - 5) Alphonse Oduor
Secretary
 - 6) Stephen Maritim Kimetto
Director/Shareholder
 - 7) Paul Kiprotich Rutto
Director/Shareholder
 - d. This Honorable Court be pleased to find the proposed contemnors/respondents above stated to be in contempt of the court order dated October 7, 2020 and more particularly order number 2 thereof preserving the suit premises in purporting to threaten to lock the 1st to 6th applicants businesses situated on suit premises LR No Eldoret Municipality Block 6/58.
 - e. Pursuant to prayer (c) and (d) above, the proposed contemnors/respondents jointly and severally be ordered to attend court to show cause why they should not be punished by imprisonment for a period not exceeding six (6) months or to be fined or both as may be imposed by the Honorable Court for contempt of the court orders set out in prayer (c) and (d) above.
 - f. The proposed contemnors/respondents be ordered to compensate the 1st to 6th applicants by payment of such damages as may be assessed by the court for harassing, threatening and grossly interfering with the 1st to 6th applicants' businesses situated on suit land I-R Nos Eldoret



Municipality Block 6/58 and Eldoret Municipality Block 7/7 which actions are patently in contempt of the court orders set out in prayer (c) and (d) above.

- g. The proposed contemnors/respondents to pay the costs of this committal application.
2. The application is brought pursuant to order 40 rule 3 of the *Civil Procedure Rules*, section 1A (3) of the *Civil Procedures Act* CAP 21 Laws of Kenya and section 5 of the *Judicature Act* as read with *Contempt of Court Act* 1981 of England and order 52 rule 2(1) of the *Supreme Court of England Rules*.
3. The application is supported by the affidavit sworn by Samuel Ngugi Njoroge, the 1st applicant, and is based on the following grounds:-
 1. The Honorable Court issued an order dated February 10, 2020 wherein at order number 2 thereof, the court appointed Grant Thornton as the receiver managers of the 1st and 2nd Plaintiff.
 2. That as per order number 2 (b) through to (n) thereof, the court clearly set out the powers and duties of the receiver managers.
 3. That at order number 3 thereof the court appointed Sedco Consultants Limited as estate agents to manage, maintain and collect rent accruing from the 1st and 2nd Plaintiffs properties.
 4. That in blatant contempt of order number 2 (h) thereof, Sedco Consultants Limited (estate agents) unlawfully instructed auctioneers to distrain for rent against the 1st to 6th applicants' business situated on LR No Eldoret Municipality Block 6/58 and LR No Eldoret Municipality Block 7/7.
 5. That in flagrant contempt of order number 2 (b) (j) and (k) dated February 10, 2020, Sedco Consultants Limited (Estate Agents) proceeded to instruct lawyers to file a case over the suit premises LR No Eldoret Municipality Block 6/58 against the 1st to 4th applicants in the Business Premises Rent Tribunal *vide* Eldoret Tribunal Case No 24 of 2020 — *Hasham Lalji Properties Ltd & Another vs Samuel Ngugi Njoroge & 5 others*.
 6. That the actions Sedco Consultants Limited amount to illegal usurpation and arrogating of powers and duties of the receiver managers as vested under order number 2 (b) through to (n) of the order dated February 10, 2020.
 7. That whilst fully aware of the subsistence of the preservation order issued by this court on October 7, 2020 Sedco Consultants Limited (estate agents) wrote letters dated October 12, 2020 which were addressed to the applicants herein threatening to lock their respective businesses situated at the suit premises LR No Eldoret Municipality Block 6/58 which action was/is in gross contempt of the preservation order dated October 7, 2020.
 8. That it is patently clear that Sedco Consultants Limited (estate agents) is hell-bent to persist in such conduct of contempt of the court orders hence it is necessary for this court to issue an order of injunction to restrain it from perpetrating its illegal actions to safeguard the administration of justice and the rule of law.
 9. That the contempt of the court orders as perpetuated by Sedco Consultants Limited defies and undermines the authority and dignity of this court.
 10. That it is the plain and unqualified obligation of every person or entity against or in respect of who an order is made by a court of competent jurisdiction to obey such order(s) to the fullest.
 11. The respondents actions amount to gross impunity and are quasi-criminal and as such punishable under the law.



12. That it is trite law that court orders are not issued in vain and must be obeyed.
 13. That the 1st to 6th applicants will suffer irreparable loss and damage unless the orders are issued as prayed as their businesses which constitute the source of their income and livelihoods which businesses now face imminent risk of closure through illegal actions of Sedco Consultants Limited (estate agents).
 14. That the applicants applies that the court finds the proposed
contemnors/respondents guilty of contempt of the court orders dated February 10, 2020 and October 7, 2020 and to punish the contemnors as provided for by the law to avert anarchy, breach of the rule of law and the course of justice from being defeated.
 15. The court is vested with powers to punish the contemnors/respondents for contempt of its orders.
4. The respondents/contemnors opposed the application through the replying affidavit sworn by the 1st respondent/contemnors' director Mr Paul Kirpotich Ruto who states that the 1st respondent is a real estate letting and managing agency of Eldoret Municipality block 7/7 where the applicants are tenants. He states that the applicants filed this application with the objective of avoiding and frustrating their rent obligations and circumventing the court orders of February 10, 2020 and September 23, 2020.
 5. He also states that by an order dated February 10, 2020 the court appointed the 1st respondent as estate agents in respect to the 1st plaintiff's properties to manage the said properties, undertake maintenance and repairs of the property and collect rent. He avers that the court made further orders on September 23, 2020 wherein the applicants were enjoined to the suit and ordered to pay rent to Sedco Consultants Limited. He states the orders of February 10, 2020 and September 23, 2020 have not been set aside or stayed but that the applicants have continued to disobey them.
 6. He further states that as a result of the applicant's failure to pay rent, the respondent instructed auctioneers to levy distress for unpaid rent and further, that on October 7, 2020 the court issued an order staying the sale of goods which order the respondent complied with. He adds that the 1st respondent did not locked the applicants' premises even though the applicants have continued to disobey the court order.
 7. The application was canvassed by way of written submissions which I have considered alongside the application and the respondent's response. The main issue for determination is whether the applicants have made out a case for the granting of the orders sought.
 8. The applicants' case was that the respondents violated the court orders of February 10, 2020 and October 7, 2020 to preserve the suit property by threatening to lock the 1st to 6th applicants' businesses situated in Eldoret Municipality Block 6/58.
 9. The respondents denied the allegation that they disobeyed the said court orders but stated that upon receipt of the said orders, the 1st respondent complied and did not lock the applicants' premises. The respondent however faulted the applicants for failing to pay rent thus disobeying court orders.
 10. *Black's Law Dictionary 9th Edition*, defines contempt as:

The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.



11. The applicants invoked section 5 of the *judicature Act* which 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 that power shall extend to upholding the authority and dignity of the subordinate courts.
12. In *Sam Nyamweya & Others v Kenya Premier League Ltd and Others* [2015] eKLR Justice Aburili 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.”
13. *Halsbury’s Law of England, Vol. 9(1) 4th Edition* states as follows;
- “Contempt of court can be classified as either criminal contempt, consisting of words or acts which impede or interfere with the administration of justice or which creates substantial risk that the course of justice will be seriously impeded or prejudiced, or contempt in procedure, otherwise known as civil contempt consisting of disobedience to judgment, orders or other process of court and involving in private injury.”
14. In the instant application, the applicants contended that on February 10, 2020, the court appointed the 1st respondent as the estate agents to manage and collect rent. The applicant claimed that the said appointment did not give the 1st respondent the mandate to distrain for rent. It is the applicants’ case was that instructing the auctioneers to attach their properties amounted to contempt of court.
15. The elements of civil contempt as were laid out in contempt in Modern New Zealand that was cited in *North Tetu Farmers Co. Ltd vs Joseph Nderitu Wanjohi* [2016] eKLR as follows:-
- “There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-
- (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
 - (b) the defendant had knowledge of or proper notice of the terms of the order;
 - (c) the defendant has acted in breach of the terms of the order; and
 - (d) the defendant’s conduct was deliberate.
16. A perusal of the court record reveals that the order dated February 10, 2020 directed the 1st respondent to manage, maintain and collect rent. The dispute herein relates to the attachment of the applicants’ properties under distress for rent. The order dated October 7, 2020 was to the effect that the 1st respondent was restrained from closing the tenants’ premises or interfering with their goods.
17. With regard to the order dated February 10, 2020, the 1st respondent was tasked with collecting rent and managing the property. I however, note that despite the lengthy submissions and replies, the applicants did not demonstrated to the court that they complied with the said orders.



18. I find that the purpose of the orders granted by the court was to preserve the plaintiffs' property pending the hearing and determination of the suit. The orders were not intended to provide an excuse or opportunity to the tenants to default in performing their obligations as tenants.
19. I also note that the order dated October 7, 2020 was complied with and that the proclaimed goods have not been interfered with since the court order.
20. In a nutshell, I find that the applicants have not sufficiently demonstrated that the respondents deliberately disobeyed court orders or at all. This court takes cognizance of the fact that contempt of court proceedings are a serious undertakings because a court exercising this jurisdiction is minded to ensure the orderly functioning of society and the rule of law. On conviction, the alleged contemnor stands to lose his or her liberty. Contempt of court proceedings should not, therefore, be taken lightly.
21. For the above reasons, I am not satisfied that the applicants have proved their case to the required standards. I note that while the applicants seek orders of contempt against the respondents, they have on their part, not complied with the orders issued on February 10, 2020 and September 23, 2020. Consequently, I find and hold that the application dated November 19, 2020 is not merited and I therefore dismiss it with costs to the respondents.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF SEPTEMBER 2022.

W. A. OKWANY

JUDGE

In the presence of: -

Mr Bwire for Limo for plaintiffs

Mr Njuguna for Applicant in application dated 19/5/2021

Mr. Mituga for the respondent.

Mr. Abuya for 2nd defendant in application dated 19/5/2022

Ms Dave for 1st defendant.

Court Assistant- Sylvia

