



**Maurizio & 3 others v SBM Bank Ltd & 2 others (Environment & Land
Case 143 of 2018) [2023] KEELC 18260 (KLR) (14 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18260 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 143 OF 2018**

**EK MAKORI, J
JUNE 14, 2023**

BETWEEN

**NARDIEL MAURIZIO 1ST APPLICANT
MAURIZIO COPORDARCA 2ND APPLICANT
TESTA GIANCARLO 3RD APPLICANT
FEDRIGA FRANCESCO 4TH APPLICANT**

AND

**SBM BANK LTD 1ST DEFENDANT
TROPICANA HOTELS LIMITED 2ND DEFENDANT
KEYSIAN AUCTIONEERS 3RD DEFENDANT**

RULING

1. The application dated January 17, 2023 seeks to have the 1st Respondent be cited for contempt for disobeying court orders dated May 12, 2022 (Olola J). That the orders were specific that the 1st Respondent was to release title document LR No Portion 775 Malindi. That the ruling was served on July 5, 2022 and therefore the authority and dignity of this Court have been placed in disrepute.
2. That the 1st Defendant's Manager Ibrahim Saka be committed to Civil Jail for a maximum of up to 6 months for deliberately refusing and or continuing to disobey, flout or circumvent this Court's Order issued on July 5, 2022 for continuing to hold the title in issue.
3. Parties were directed to do written submissions on the issues raised on the application.
4. The applicant contends that the Respondent has totally failed to adhere to the orders served on it demanding that the original Land Title Nos 775 or CR No 9775/25 for purposes of sub-division and hipping out (sic) a portion that the applicant purchased where Club 28 is erected.



5. The orders were duly served on the Respondent. A letter was done to the 1st Defendant's advocate for a copy of the deed plan to enable the Plaintiffs to engage surveyors but no response.
6. The applicant submitted that the Court has teeth and should cite the Manager of 1st Defendant for contempt to safeguard the rule of law.
7. The Respondent admits knowledge of the orders but that the orders were in two limbs; - orders not to advertise and sell the suit property until the current suit was heard and determined. The second limb (significant in this application was the surrender of the original title of portion 775 or CR No 9775/25 to enable sub-division and hip out (sic) a portion that they purchased where Club 28 is erected.
8. The Respondent contends the sale was halted (in compliance with the 1st limb). As for the second limb, the title sought to be surrendered is a parent title that ought to be surrendered to the Mombasa Land Office, however, the Applicants have never prepared the respective Sketch Plans and obtained respective Deed Plans to enable the conveyance registered.
9. The Respondent further avers that it will be foolhardy to release the title to the Applicant who only requires 7.50 acres of land from the parent title before such Sketch Plans and Deeds Plans are obtained; besides the remaining balance of the land is huge.
10. The Applicants have never requested the title to be surrendered to the Lands Office. The application is premature.
11. The Respondent submitted that contempt proceeding aim at negating the liberty of an individual and its proof is on a higher standard than in the normal civil suits as held in *Katsuri Ltd v Kaporch and Depor Shah (2016) eKLR* as per Mativo J.
12. The Respondent further averred that no specific element of breach of the terms of the orders have been put aside held in *Justus Kariuki Mate & Another v Hon Martin Nyaga Wambora & Another [2017] eKLR*.
13. The issues for determination are whether the 1st Respondent should be cited for contempt. In addition, who is to bear the costs of the application?
14. Both parties agreed in their respective averments that Olola J gave orders of stay of sale and release of title documents pertaining to the land parcels Nos 775 or CR No 9775/25. The 1st limb of stoppage of sale has been complied with. It is the release of the title document for purposes of hiving 7.50 acres that have not been adhered to.
15. The standard of proof for contempt is as stated by Mativo J in *Katsuri Ltd v Kaporch and Depor Shah (2016) eKLR*:

' Writing on proving the elements of civil contempt, learned authors of the book Contempt in Modern New Zealand[22] have authoritatively stated 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.

Although the proceedings are civil in nature, it is well established that an applicant must prove the elements beyond reasonable doubt, at least higher than the standard in civil cases, The fact that the liberty of the defendant could be affected means that the standard of prove is higher than the standard in civil cases. It is incumbent on the applicant to prove that the defendant's conduct was deliberate in the sense that he or she deliberately or willfully acted in a manner that breached the order.'

16. The purpose of punishing for contempt is to ensure that the Rule of Law reigns supreme, and the rule of the jungle does not set in in an orderly and civilized society. As correctly stated in the authorities cited, it is the function of the court to ensure the Rule of Law flourishes without let or hindrance. (See for example the rendition by Mabeya J in *Africa Management Communication International Ltd v Joseph Mathenge Mugo & another* [2013]eKLR):

' I am of the same persuasion. The reason why power is vested in courts to punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. The law of contempt has evolved over time in order to maintain the supremacy of the law and the respect for law and order. As it was in the time of Chief Justice McKean in 1778, so it is today that courts have a duty to ensure that citizens bend to the law and not vice versa. Indeed, if respect for law and order never existed, life in society would be but short, brutish, and nasty. It is the supremacy of the law and the ultimate administration of justice that is usually under challenge when contempt of court is committed. This is so because a party who obtains an order from Court must be certain that the order will be obeyed by those to whom it is directed. As such, the obedience of a court order is fundamental to the administration of justice and the rule of law. A court order once issued binds all and sundry, the mighty and the lowly equally without exception. An order is meant to be obeyed and not otherwise.'

17. Looking at the standard of proof and the rationale for punishment for contempt, whereas the Applicant has stated the orders were served, the other elements of disobedience have not crystallized as per the Respondent who says they are ready to have the title released. The Applicant has not taken out the Deed Plans and Sketch Plans in readiness for hiving the 7.50 acres. It is an implementation issue.
18. The germane orders to me which commends issuance at this stage will be as follows:
- i. In furtherance of the orders of this court (Olola J) dated May 12, 2022 the 1st Respondent herein is ordered to surrender the title that is Nos 775 or CR No 9775/25 to the Mombasa Law Registry for purposes of hiving 7.50 acres belonging to the applicant within 14 days hereof.
 - ii. Failure to do so, the Manager of the 1st Respondent one Mr Ibrahim Saka to be summoned to appear before this Court to show cause why he should not be committed to Civil Jail for a period of not more than six (6) months.
 - iii. Costs in the cause.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS 14TH DAY OF JUNE 2023

E.K. MAKORI



JUDGE

In the presence of :

Mr. Bosire holding brief for Mr. Staussi for the Plaintiffs

Ms. Randa holding brief for Gikandi for 1st Defendant.

