



**Giriama Ranching Company Limited v Maalim & another; Shikari & 4 others (Respondent)
(Environment & Land Case 2 of 2022) [2023] KEELC 19013 (KLR) (19 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19013 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 2 OF 2022
EK MAKORI, J
JULY 19, 2023**

BETWEEN

GIRIAMA RANCHING COMPANY LIMITED PLAINTIFF

AND

ABDULLAHI HARET MAALIM 1ST DEFENDANT

MAHAMUD SLAT DAGANE 2ND DEFENDANT

AND

RAJAB MENZA SHIKARI RESPONDENT

EDWARD FONDO NDORO RESPONDENT

FRANKLIN FURAHA KALUME RESPONDENT

JOSEPH KARISA GONZI RESPONDENT

DANIEL CHENGO RESPONDENT

RULING

1. Application dated November 9, 2022 seeks to cite the Respondents for contempt. It was opposed. The application was canvassed by way of written submissions.
2. The Applicant contended that by the orders of this court dated September 26, 2022, it was ordered that the Defendants pay Kshs 2,565,000/- to the Respondents and that the Defendants were to continue with quiet enjoyment of the suit premises without interference from the Plaintiffs or any other 3rd parties. This arose from a consent order.
3. The Applicant averred that the entire amount was paid variously as explained in the affidavit in support.



4. That on August 1, 2018, the Applicants entered into a lease agreement with the Respondents over property known as LR. No 12785 CR. No19142 comprising 26,745 Ha. within Kilifi County and referred to as Giriama Ranch for a period of 15 years at a monthly rent of Kshs. 285,000/=.
5. That upon issuance of Orders dated September 26, 2022, the Applicants paid outstanding rent arrears of Kshs. 2,565,000/= through the request of the Plaintiffs' counsel vide the letter dated August 23, 2022. Both the letters and the payment receipts were annexed to the Applicants' supplementary affidavit.
6. The Applicants stated that it was odd of the Respondents and Mr. Kenga Advocate for the Respondents to claim not having received the entire amount while the same was directly deposited on his account and some sent to his Mpesa account No 0721xxxx. on the October 31, 2022 through the Respondent's advocate, a letter was received dated even date forwarding what purported to be a resolution by the officials of the Plaintiff/Respondents terminating the lease agreement again. It will be noted that in the said resolution for termination of the lease, the reasons for termination were non-payment of rent amounting to Kshs. 1,800,000/= and a further Kshs. 134,000/= making a total of Kshs. 1,934,000/=.
7. The Applicant averred it was surprising, at what time did the Plaintiff/Respondents realize these rent arrears when on the 21st of September 2022 they had just recorded consent in court for cumulative rent arrears of Kshs. 2,565,000/=. From the documents on record, the Plaintiff/Respondents were paid more than Kshs. 85,000/=.
8. The consent order did not provide for any balance of the rent arrears, the Plaintiff/Respondents despite their admission during a meeting held at Dam View-Mariakani on September 10, 2022 at Minute No. 2, "The chairman confirmed that the payment of rent of Kshs. 2,565,000/= has already been made through lawyer William Kenga." The said Minutes were annexed to the Applicant's supplementary affidavit dated February 20, 2023. No rent arrears were mentioned, In the Plaintiff/Respondent's Further Affidavit dated February 27, 2023 paragraph 4, the Respondents despite the admission, again claim for rent arrears of Kshs. 115,000/=. This was fallacious given the Respondent's admission.
9. The Applicants submitted that the law on contempt demands that every person against, or in respect of whom, an order is made by a court of competent jurisdiction has to obey it unless and until that, order is discharged. That a party in contempt ought not to be heard until he purges it, a matter justified by grave public policy considerations and where the course of justice is impeded and there are no other effective means of securing this compliance. The case *Ramesh Popatlal Shah & 2 Others v National Industrial Credit Bank Limited* [2005] eKLR was cited. The Applicant further stated it is also trite that a party wishing not to comply with court orders must have them discharged or set aside. None of that happened in this case. The case of *Republic v Kenya School of Law & 2 Others Ex-Parte Juliet Wanjiru Njoroge & 5 Others* [2015] eKLR, is also quoted. It is also trite law that knowledge of an order is sufficient for purposes of contempt. It was even contemptuous with the orders in existence for the Plaintiff/Respondents to purport to terminate the lease agreement on the 25th October 2022. See *Africa Management Communication International Ltd v Joseph Mathenge Mugo & Anor.* [2013]eKLR, *Justus Kariuki Mate & Anor. v Hon. Martin Nyaga Wambora* C.A No. 24 of 2014.
10. The Applicant further submitted that the Plaintiff/Respondents in both their Replying Affidavit and Further Affidavit, the contemnors averred that the Applicants are still on the Ranch. The true position is that upon the purported second termination of the lease dated October 25, 2022, the Applicants were forcibly kicked out of the suit premises. The jerking out of the Applicants from the suit property



while the orders were in place was itself contemptuous. In *Ramesh Papatlal Shah (Supra)* the court held that:

“As long as the order is not been stayed and is not yet discharged, then a litigant who elects to disobey it does so at the pain of committing contempt of Court.”

11. In the case of *R v Cabinet Secretary For Transport Ex-Parte Kenya Country Bus Owners' Association) Through Paul G. Muthambi- Chairman & Others* [2014] Odunga J. had this to say:

“In my view, a person who deliberately either by commission or omission misleads the court and the public that a particular state of affairs exists while knowing very well that is not the position, cannot be said to be open, candid, and transparent. Dishonesty in my view is an act which is antithesis to transparency and vice versa.”

12. The Applicant stated that given the abovementioned, there could be no doubt that the Respondents knowing the existence of the court orders have willfully disobeyed the same by their contemptuous conduct and actions and ought to be found guilty of contempt of court and appropriately punished. To have them purge their contempt, all matters carried out by them in breach of the court's orders must also be reversed, as they constitute a nullity and are void.

13. Finally, the Applicant drew this Court's attention to its inherent jurisdiction to do justice between the parties and to prevent abuse of due process and compelling observance of its processes, dignity, and authority. See *R v Cabinet Secretary for Transport (Supra)* the court had this to say:

“One of the instances in which the court exercises its residual inherent power is in the fulfillment of its obligation to ensure that the orders it issues are not issued in vain.”

The court went further to say that:

“It is moreover recognized that the court has inherent powers to make such orders as may be necessary for the ends of justice. Inherent power, it must be stressed is not donated by Section 3A of the *Civil Procedure Act*.”

14. The Respondent replied that the lease's termination resulted from failure to pay accrued rent. The arrears paid was Kshs 2,450,000/-. Instead of Kshs 2,565,000/- which were arrears due as of 21st September 2022. The Respondent averred that the contempt proceedings were brought to defeat the terms of the lease agreement other than that Kshs 1,800,000/- had not been paid by the Applicant as the allegation that it went towards payment of accumulated annual returns and penalties to the Registrar of Companies. This sum is confirmed not to have been paid as stated by Monda Associates Accountants. That when the Respondent met, fresh resolutions found that such monies were not paid.

15. The Respondents, stated that they are not in contempt of the said Court orders and that the application was only commenced to defeat the operation and or enforcement of the lease agreement, especially on the issue of termination which was provided for in the lease agreement The termination clause states as follows:

“Notwithstanding the foregoing, this lease can be terminated by the Lessees or the Lessor by giving six (6) calendar month notice in writing to the other party or giving six (6) month's rent in lieu of such notice during the continuance of the lease.”



16. According to the Respondents, whereas a consent order was indeed recorded on 21st September 2022 as stated, it did not do away with the terms and conditions of the lease agreement of 1st August 2018. The Respondents were acting within their rights to invoke the termination clause, aforementioned, which does not call for the giving of any reasons for such termination. Upon being served with the said Notice, the Defendants/Applicants responded by writing a letter dated 3rd November 2022 daring the Respondents to move the Court, essentially meaning that they were not ready to vacate the suit premises. As per the resolution on termination dated 25th October 2022, the Respondents, though not mandated to give reasons for the termination listed various grounds upon which termination was based including a ground of fraud and deceit by the Defendants/Applicants who failed to pay rent amounting to a sum of Kshs. 1,800,000/=, alleging that they had spent the said sum to pay accumulated annual returns and penalties to the Registrar of Companies on behalf of the Plaintiff, which was false.
17. The non-payment of rent of a sum of Kshs. 1,800,000/= was based on a decision made in a meeting held on 17th August 2018 where the Defendants/Applicants deceitfully told the Respondents that they had spent the said sum to pay the Registrar of Companies' accumulated annual returns and penalties, yet no monies were paid to that effect as confirmed by the Registrar of companies vide their email of 21st November 2022.
18. Finally Respondents submitted a letter dated 26th September 2022 from Monda & Associates Accountants confirming that the Defendants/Applicants never paid the sum of Kshs. 1,800,000/=. It should be noted that the fresh resolution to terminate the lease was made upon receipt of evidence that indeed the Defendants/Applicants did not pay any monies to the Registrar of Companies, which evidence was only received after the adoption of the consent.
19. Respondent further averred that when the Defendants/Applicants were served with the Respondents' Replying affidavit, they filed a Supplementary affidavit on 21st February 2023 to which various documents were attached, including Mpesa transactions slip and Bank deposit slip together with 2 bank statements whose relevance in the matter is unknown.
20. The Defendants/Applicants finally attached a copy of their Advocates letter dated 12th September 2022 asking whether the entire sum of Kshs. 2,565,000/= had been paid for the issuance of a receipt, yet they knew that the said sum had not been fully paid The last document is an extract of an email whose relevance is unknown in the matter.
21. The Defendants/Applicants have accused the Respondents of disobeying the Court Orders of 21st September 2022 by delaying the Defendants'/Applicants' access to the suit premises and also allowing third parties to the suit property. These allegations were not backed up with any evidence, at no given time were the Defendants/Applicants out of the suit premises since the time they leased the suit land on 1st August 2018. The consent order of 21st September 2022 which was reproduced and, in particular, Order No. 3 stated that the Defendants/Applicants were free to continue with quiet possession of the suit premises. It did not state that the Defendants/Applicants be allowed access or be allowed re-access of the suit land. Similarly, the consent letter dated 19th August 2022 signed by the parties herein and filed on 22nd August 2022 provided for a clause on the Defendants'/Applicants' liberty to continue with quiet possession. The same position is captured in the Minutes of a meeting held on 10th September 2022 which were produced by the Defendants/Applicants to continue to use the suit land. that the Defendants/Applicants were not being sincere at all because they claim to have been denied access to the suit land, yet they were aware that they are still in occupation of the suit land as there is no evidence to the effect that upon the adoption of the consent order, they moved out of the suit premises. Instances of insincerity were also captured in the Defendants'/Applicants' Submissions where their Advocates from the bar claimed, that the Defendants/Applicants were forced/kicked out



- of the suit premises. There is nowhere in the Contempt application or the Defendants'/Applicants' supplementary affidavit mentioning that there was forceful eviction of the Defendants/Applicants from the suit land.
22. The respondent contended that if at all the Defendants/Applicants were kicked out of the suit property; there could have been evidence of correspondences or even photographs showing their animals being driven out of the suit premises even by the so-called third parties. This piece of evidence was very vital because contempt applications require evidence of disobedience, though not beyond reasonable doubt but a degree or level closer to that of beyond reasonable doubt. On that ground alone, the Respondents submitted the contempt application must fail for want of evidence.
 23. The Respondents have claimed through their responses and in particular, their further affidavit that the Defendants/Applicants have not paid rent from the time the consent order was adopted up to date. The Defendants/Applicants have not denied this claim, nor have they offered to pay any rent arrears, yet the consent Order of 21st September 2022 as reproduced provided for the Defendants/Applicants to continue paying rent as per the lease agreement. still, on the consent order, there was an order for the payment of Kshs. 2,565, 000/=, being accumulated rent arrears within 7 days but the evidence available is that only Kshs. 2, 450, 000/= was paid leaving a balance of Kshs. 115,000/=.
 24. The Respondents question the jurisdiction of the court in handling further proceedings herein. The parties herein are bound by the Lease agreement of 1st August 2018 appearing from pages 7 to 12 of the Replying affidavit. The said Lease agreement, on page 10, thereof has an Arbitration clause as a forum for the resolution of disputes. The Lease agreement also has a termination clause on page 11, thereof, which the Respondents invoked in issuing a fresh Notice of termination based on a resolution passed on 25th October 2022. Having invoked the termination clause, aforementioned, any disputes arising from the said termination should be treated as a fresh cause of action, requiring an arbitration forum and not a court process in line with the Arbitration Clause. On this ground alone, the Court ought to down its tools. the termination, though not requiring any reasons, is said to be based on fraud and or deceit and or conman ship where the Respondents lost a sum of Kshs. 1,800,000/= to the Defendants/Applicants through deduction and or retention of rent to allegedly pay accumulated annual returns and penalties to the Registrar of Companies. Monies that were never spent.
 25. Other reasons offered are related to rent arrears and constant or persistent wrangles, something that seemed known and acceptable to the Defendants/Applicants who have never paid any rent from the time the lease was terminated in October 2022. Parties are still bound by the lease agreement and no attempt should be made to replace the lease agreement with the consent order. Whether the consent order is still enforceable or not or even overtaken by the termination of the lease, the fact remains that parties had a right to terminate the lease, the existence of the orders, notwithstanding as the consent order did not suspend or nullify the terms and conditions of the lease agreement and obedience of the Consent Order can only be justified during the continuation of the lease and not otherwise.
 26. The Respondent submitted that it is on this basis that the fresh termination of the lease gave rise to a new cause of action, which can only be handled through arbitration processes, and for that reason, the proceedings before this Court are without jurisdiction, deserving to be struck out with costs.
 27. Flowing from the above, The Respondents urged the Court to be so persuaded by the applicable provisions of the law, the documentary evidence tendered herein and the various authorities in dismissing the Defendants'/Applicants' application dated 9th November 2022 with costs.
 28. I have reviewed the materials placed before me. It is true parties entered a consent to have the Applicant pay rent arrears and be allowed to have quiet enjoyment of the suit property. What remains to decide is



whether based on the evidence before me the Respondents are in contempt of court orders to warrant the orders sought.

29. As correctly stated by the Applicant the law on contempt is clear and definite in that it is and remains 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 unbending 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 even void. It is also trite and long time-honored that a party in contempt ought not to be heard until he purges its contempt, a matter justified by grave public policy considerations and where the course of justice is impeded and there are no other effective means of securing this compliance. See the case of *Ramesh Popatlal Shah & 2 Others v National Industrial Credit Bank Limited* [2005] eKLR. It is also trite that a party wishing not to comply with court orders must have them discharged or set aside. See the case of *Republic v Kenya School of Law & 2 Others Ex-Parte Juliet Wanjiru Njoroge & 5 Others* [2015] eKLR:

“Court orders are not made in vain and are meant to be complied with. If for any reason a party has difficulty in complying with court orders the honourable thing to do is to come back to court and explain the difficulties faced by the need to comply with the order. Once a Court order is made in a suit the same is valid unless set aside on review or on appeal. In *Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another* [2005] 1 KLR 828 Ibrahim, J (as he then was) stated:

“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, 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”.

24. This position was confirmed by the Court of Appeal in *Refrigerator & Kitchen Utensils Ltd. vs. Gulabchand Popatlal Shah & Others* Civil Application No. Nai. 39 of 1990. In *Wildlife Lodges Ltd vs. County Council of Narok and Another* [2005] 2 EA 344 (HCK) the Court expressed itself thus:

“It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a Court of competent jurisdiction to obey it until that order was discharged, and disobedience of such an order would, as a general rule, result in the person disobeying it being in contempt and punishable by committal or attachment and in an application to the court by him not being entertained until he had purged his contempt. A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it...It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid – whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed...If there is a misapprehension in the minds of the defendants as to the reasonable meaning of the order, then the expectation



of them is that they would have made an application to the court for the resolution of any misunderstanding and this would have been the lawful course...In cases of alleged contempt, the breach for which the alleged contemnor is cited must not only be precisely defined but also proved to the standard which is higher than proof on a balance of probabilities but not as high as proof beyond reasonable doubt...The inherent social limitations afflicting most people in a developing country such as Kenya tend to restrict access to the modern institutions of governance, and more particularly to the judiciary which is professionally run, based on complex procedures and rules of law. Yet, this same Judiciary is generally viewed as the impartial purveyor of justice, and the guarantor of an even playing ground for all, a perception which ought to be strengthened, through genuine respect for the courts of justice, and through compliance with their orders. Consistent obedience to court orders is required, and parties should not take it upon themselves to decide on their own which court orders are to be obeyed and which ones overlooked, in the supposition that this oversight will not impede the process of justice...Justice dictates even-handedness between the claims of parties; and if it be the case that the plaintiff/applicant has not been accorded a level playing ground for the realisation of its economic activities, a matter that of course can only be established through evidence in the main suit, then the court ought to provide relief, by applying the established principles of law, one of these being the law of contempt...An ex parte order by the court is a valid order like any other and to obey orders of the court is to obey orders made both ex parte and inter partes since the Court by section 60 of the Constitution is the repository of unlimited first instance jurisdiction, and in this capacity it may make ex parte orders where, after a careful and impartial consideration, it is convinced that issuance of such an order is just and equitable. There is nothing potentially oppressive in an ex parte order since such an order stands open to be set aside by simple application, before the very same court... Where a party considers an ex parte order to cause him undue hardship, the simple application will create an opportunity for an appropriate variation to be effected thereto; therefore there will be no excuse for a party to disobey a court order merely because it had been made ex parte and this argument will not avail either the first or the second defendant”.

30. It is also trite law that knowledge of an order is sufficient for purposes of contempt. See *Africa Management Communication International Ltd v Joseph Mathenge Mugo & Ano* [2013]eKLR, *Justus Kariuki Mate & Anor. v Hon. Martin Nyaga Wambora* C.A No. 24 Of 2014.
31. In *Ramesh Papatlal Shah* (Supra) the court held that:

“As long as the order is not been stayed and is not yet discharged, then a litigant who elects to disobey it does so at the pain of committing contempt of Court.”
32. What follows next is whether from what I have from the warring parties, contempt is discernable. Whether all the rent arrears were duly paid and whether there was a balance of Kshs 1,800,000/- or any other figure and whether the lease agreement was affected by the consent.
33. Looking at the submissions by the parties, whereas the orders of the court stand, an issue was raised by the Respondents that not the entire amount was paid. There is also raised the issue that after the payment of the arrears, the parties reverted to the provisions of the lease agreement and that the Applicants were under a duty to continue paying the subsequent accrued rent. The effect was that the Applicants once again fell in arrears. There was also raised, the issue of dishonesty in the payment of Kshs. 1,800,000/= to the Registrar of Companies as yearly penalties, which were discovered to have



been false. All of these call for an account and further oral evidence, which the current application will not achieve.

34. Therefore the court directs:

- i. The Respondents be summoned for cross-examination as to whether Kshs 2,565,000/- was received being rent for nine months.
- ii. Whether after payment of the said figure, a unilateral decision was made to terminate the lease, contrary to the orders in place.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS 19TH DAY OF JULY 2023

E.K. MAKORI

JUDGE

In the presence of:

Mr. Simiyu for the Applicants

Mr. Kenga for the Respondents

Clerk: Happy

