



**Hasmo Agencies Ltd v National Social Security Fund (Environment & Land
Case E052 of 2023) [2023] KEELC 22493 (KLR) (22 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22493 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E052 OF 2023
MD MWANGI, J
DECEMBER 22, 2023**

BETWEEN

HASMO AGENCIES LTD PLAINTIFF

AND

NATIONAL SOCIAL SECURITY FUND DEFENDANT

(In respect of the Notice of Motion application dated 15th November, 2023)

RULING

Background

1. On 15th November, 2023, Justice Angote directed that the Chief Executive Officer (CEO) of the Defendant, National Social Security Fund (NSSF) appears before this Court on 23rd November, 2023 to show cause why he should not be fined or committed to Civil Jail for disobedience of the orders of 15th August, 2023 and 16th August, 2023.
2. On the same date that the orders were issued, the Defendant filed the application under consideration under Certificate of urgency seeking to stay the orders issued on 15th August 2023 awaiting the hearing of the substantive prayer therein for review and setting aside and the grant of leave to the Defendant to file its replying affidavit to the Plaintiff's application dated 9th November, 2023.
3. The application dated 9th November, 2023 is a Notice of Motion application by the Plaintiff seeking leave to commence contempt of court proceedings against the Managing Trustee of NSSF, David Koros, Head of Legal, Hellen C. Koech, Property Manager, Obed Mbuvi and the Head of Security Isaac Twei Koskei for failure to comply with the orders issued on the 14th and 15th August, 2023.
4. When the parties appeared before the Court, the Court directed the hearing of the Defendant's application which in essence was a response to the Court summons be considered as such and



accordingly be heard on apriority basis. The application was heard orally in open court on the 1st of December, 2023.

5. The said application was opposed by the Plaintiff by way of the grounds of opposition dated 23rd November, 2023 and the Replying Affidavit of Hassan Mohammed Abdirahman sworn on the 24th November, 2023.
6. The proceedings of 1st December, 2023 are on record and I need not replicate them in this ruling.
7. The gist of the Defendant's application of 15th November, 2023 is that it had been denied the right to be heard in response to the very serious allegations of contempt of court which are criminal in nature and have dire consequences including deprivation of the right to liberty of the concerned persons.
8. Counsel for the Plaintiff in response insisted that the Defendant had been duly served and there was evidence to that effect which was indeed confirmed by the Court before the issuance of the orders of 15th November 2023. He further stated that counsel for the Defendant had the opportunity to respond to the application for contempt orally before the Court. Counsel for the Plaintiff termed the Defendant's application as an attempt to have a '2nd bite at the cherry'.

Determination

9. I make this ruling conscious of the fact that this matter is yet to be heard. There is also the pending application of 9th November 2023. I will therefore be deliberately economical with my words in order not to embarrass or prejudice the hearing of the application and the trial of this suit.
10. The issue for determination is whether the Defendant's application is merited. Essentially, the question is whether the Defendant should be granted leave to respond to the Plaintiff's application dated 9th November, 2023.
11. As already stated above, the application by the Plaintiff of 9th November, 2023 seeks leave to commence contempt proceedings against four (4) individuals, namely:
 - a. The Managing Trustee of NSSF - David Koros,
 - b. Head of Legal – Hellen C. Koech,
 - c. Property Manager – Obed Mbuvi, and
 - d. Head of Security – Isaac Tui Koskei.
12. Justice Chacha Mwita, in the case of *Sheila Cassatt Issenber & Another vs Antony Machatha Kinyanjui [2021]* eKLR while considering a contempt of court application noted that contempt of court is in the nature of criminal proceedings and therefore, proof of a case against a contemtor is higher than that of balance of probability. The reason for that is because the liberty of the subject is usually at stake and the Applicant must prove willful and deliberate disobedience of the Court order. An application for contempt of court therefore ought to be handled with care and great caution almost like a criminal case where an accused person's right to a fair hearing is sacrosanct.
13. The Court in the above reference case cited with approval the holding in the case of *Gatharia K. Mutikika -vs- Baharini Farm Ltd [1985] KLR 227*, where the Court stated that:

“The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be mostly jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part 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.”

14. It is therefore imperative that owing to the gravity of the consequences that flow from contempt proceedings, each and every individual who is affected be granted an opportunity to present their case before a decision is made. Off course there are also conditions that the Applicant must prove to the required standard in an application for contempt.
15. This Court is the guardian of the Bill of Rights which amongst other rights guarantees the right to a fair hearing in both civil and criminal matters.
16. I must however, emphasize and make it clear for the avoidance of any doubt, that this Court does not and will not condone deliberate disobedience of Court orders. As the supreme Court of India correctly pronounced in the case of T. N. Gadavarma Thiru Mulpad –vs- Ashok Khot & Another [2006] 5 SCC,

“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 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 cornerstone 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.”

17. This Court exercising its inherent powers to prevent any injustice and uphold the rule of law allows the Defendant’s application dated 15th November, 2023; meaning that the order of 15th November, 2023 is set aside. The Defendant and its officers, Mr. David Koros, Ms. Hellen C. Koech, Mr. Obed Mbuvi and Mr. Isaac Twei Koskei are granted leave to file and serve a replying affidavit(s) to the Plaintiff’s application dated 9th November, 2023, on or before the 16th January, 2024. The Plaintiff/Applicant will have corresponding leave, if need be, to file and serve a further affidavit in response to any issues arising from the Affidavits filed, in 7 days upon service by the Respondents.
18. The Court will give a date for the hearing of the application dated 9th November, 2022.
19. The Costs of this application shall be in the cause.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF DECEMBER, 2023.

M. D. MWANGI

JUDGE

In the virtual presence of:

Mr. Shikanda h/b for Mr. Osundwa for the Plaintiff/Respondent

Mr. Mutunga for Defendant/Applicant

Court Assistant – Yvette

M.D. MWANGI



JUDGE

