



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 38 OF 2011

BRUNELLA PANINI & OTHERS.....PLAINTIFFS

=VERSUS=

1. POLICINO OASIS MANAGEMENT LIMITED

2. POLICINO OASIS LIMITED

3. GIOVANNI DE CARO

4. POLICINO COSIMO

5. THOMAS HINZANO NGONYO.....DEFENDANTS

AND

1. CLAUDIA ZANONI

2. BELLUOMINI GIULIANA

3. MARIA PETRINO

4. GIANNA ELISA RECCOSTA

5. ALESSANDRO CAZZANTI

6. MARIELLA PALAZZICLAUDIOCLAUDIO BONE

7. VIGNAROLI VITTORINO

8. VIRGNAROLI VITTORINO

9. LUIGI ARCARI.....INTERESTED PARTIES/APPLICANTS

RULING

Introduction:

1. On 5th March, 2015, the 4th Interested Party filed an Application seeking to commit Brunella Panini,

Maurizio Turato and Paola Ippolito to prison for such period as the court may deem fit and just having disobeyed the order made herein on 9th July 2013.

2. Before the said Application could be heard, the Respondents' advocate filed a Preliminary Objection dated 9th March 2015 in which he averred that the Application dated 5th March, 2015 is bad in law because the Applicant had failed to follow the mandatory statutory procedures in filing their Application.

3. The parties agreed to argue the Preliminary Objection first.

4. Counsel for the alleged contemnors submitted that if a party approaches the court under Section 5 of the Judicature Act, as in this case, the procedure that is applicable in the filing of an application for contempt is the one applicable in England.

5. Counsel submitted that the failure by the Applicant to obtain the leave of the court before filing the Application dated 5th March 2015 as required by Order 52 Rule 2 of the Rules of the Supreme Court of England is fatal

6. Counsel relied on the case of **John Mugo Gachuki Vs New Nyamakima & Co. Ltd, Nairobi HCCC No. 456 of 2011** which I have considered.

7. On the other hand, the Applicants' counsel submitted that England has enacted an Act of Parliament which provides how contempt proceedings are to be conducted.

8. Counsel submitted that the Rules which were enacted in 1981 in England replaced Order 52 of the Supreme Court of England Rules.

9. Under the said Rules, counsel submitted, the leave of the court is not required before one can commence committal proceedings. Counsel relied on the case of **Christine Wangari Vs Elizabeth Wanjiru & Others, Nairobi Civil Application Number 233 of 2007 (UR 144 of 2007) and Shimmes Plaza Ltd Vs National Bank of Kenya Ltd, Civil Appeal No. 33 of 2012.**

10. It is not in dispute that pursuant to the provisions of Section 5 of the Judicature Act, the High Court and the Court of Appeal have the power to punish an individual for contempt of court as is for the time being possessed by the High Court of Justice in England.

11. The law governing the High Court of Justice in England in punishing individuals for contempt of court previously was the common law and Order 52 of the Supreme Court Rules. However, and as observed by the Court of Appeal in the case of **Shimmes Plaza Limited (Supra), and Christine Wangari Gachega Vs Elizabeth Wanjiru & Others (Supra)**, the prevailing law of contempt in England is now found in the Contempt of Court Act of 1981 and part 81 of the Procedure in the Civil Procedure (Amendment No. 2) Rules, 2012. That law replaced Order 52 of the Supreme Court Rules for contempt proceedings.

12. The procedure on how to make a committal application for breach of a Judgment, Order or Undertaking to do or abstain from doing an act is provided for under Part 81.10 of the Rules. The said Rule does not require the Applicant to obtain the leave of the court before commencing committal proceedings as argued by the alleged contemnors' advocate. The Applicant is also not required to serve on the Registrar or any other party a one day's notice before commencing the said proceedings.

13. For those reasons, I find that the Application for contempt dated 5th March, 2015 is properly before me.

14. Consequently, I dismiss the Preliminary Objection dated 9th March 2015 with costs.

Dated and delivered in Malindi this **20th** day of **March**, 2015.

O. A. Angote

Judge