



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & ADMIRALTY DIVISION
CIVIL SUIT NO. 183 OF 2014

STEPHEN MAINA KIMANGA 1ST PLAINTIFF
PATRICK GITHINJI MWANGI 2ND PLAINTIFF
FREDRICK NJORO MWANGI 3RD PLAINTIFF
HEZRON ONESMUS MAINA 4TH PLAINTIFF
FIG TREE HOTEL LIMITED 5TH PLAINTIFF

VERSUS

LUCY WAITHIRA MWANGI 1ST DEFENDANT
JULIUS KARIUKI MWANGI 2ND DEFENDANT
JOHN IRUNGU GITHINJI 3RD DEFENDANT

RULING

INTRODUCTION

1. The Notice of Motion application before the court is dated 10th October 2014. It is filed by the Plaintiffs/Applicants under Sections 1A and 3A of the Civil Procedure Act.
2. The application seeks the following orders:

“1. That due to the urgency of this motion, the same be certified urgent service of the same be dispensed with and the motion be heard ex parte in the first instance.

2. That upon hearing ex parte, the defendants herein be ordered to appear before this court and show cause why they should not be committed to prison for contempt of this court’s orders issued on 23.09.2014.

3. That upon hearing inter partes, the defendants be committed to prison for six months for blatant, disregard and disobedience of this court’s orders dated 23.09.2014.

4. That the costs of this motion be borne by the defendants/respondents in any event”.

3. The application is premised on the grounds set out therein and is supported by affidavit of PATRICK GITHINJI MWANGI dated 10th October 2014. The said deponent is one of the Plaintiffs/Applicants herein.
4. The Plaintiffs have brought this application alleging that this court issued orders on 23.09.2014 requiring the defendants to vacate and hand over the running of the 5th Plaintiffs company to the Plaintiffs. The orders restrained the defendants from interfering with the smooth running of the 5th plaintiff's company and gave the defendants 10 days to hand over to the plaintiffs the running of the 5th plaintiff's company in an orderly manner. The defendants were served with the said orders but have persistently ignored neglected and/or refused to obey the said orders and to date continue to run the affairs of the 5th plaintiff company. Instead of abiding by the court orders of 23.09.2014 the defendants have filed an application for review to circumvent obedience of this court's clear orders. The failure to obey clear court orders has undermined the authority and dignity of this court and brought it into disrepute, and that the defendants are in contempt of the court's orders, and that various attempts by the plaintiffs to enforce the orders of 23.09.2014 have been resisted forcefully by the defendants.
5. The application is opposed by the defendants/respondents vide a Replying affidavit dated 14th October 2014 and filed in court on 21st October 2014.
6. In opposing the application the Respondents have stated that they were not personally served with the orders of this court issued on 23rd September 2014, and that being the case, they cannot be cited for contempt of court. The Respondents further aver that the said orders were issued by this court on the basis that the Registrar of Companies had confirmed the Applicants as the bona fide officials of the 5th Plaintiff company. However, the Respondents state that soon after the said orders were issued, the Respondents went back to the office of the Registrar of Companies vide a letter dated 26th September 2014 (LWM1) and conducted a further search vide a letter dated 26th September, 2014 in which they sought to know the legitimate directors of the 5th Plaintiff's company for purposes of carrying on with the work of handing over of the company in compliance with the orders of this court. However, to their surprise and delight, the Respondents aver that the Registrar of Companies confirmed that they, the Respondents, were still the legitimate Directors of the 5th Plaintiff Company as per the Registrar's letter annexed as LWM1 which is a letter dated 12th September 2014. Even at this stage I note that it is ironical that the Respondents applied for a search to the Registrar vide a letter dated 26th September 2014, and that the Registrar's Reply is vide a letter dated 12th September 2014, which is 14 days before the letter of 12th September 2014. Because according to them, the Registrar confirmed in the said reply that the Respondents were the bona fide directors, the Respondents then saw no need to honour or obey this court's orders issued on 23rd September 2014.
7. The last reason given by the Respondents for their failure to comply with the court order is that the Applicants had failed to avail themselves so that the 5th Plaintiff company could be handed over to them. In other words, it is the Respondents' confession that despite their willingness to hand over the 5th Plaintiff company to the Plaintiffs/Applicants, the Plaintiffs/Applicants have not availed themselves to accept such handover. On the above ground, the Respondents have prayed that this application be dismissed.
8. In response to the averments by the Respondents, the Plaintiffs/ Applicants submitted that the said letter dated 12th September 2014 by the Registrar is a forgery and that the Registrar never wrote the same. Further the Applicant's advocates sought to confirm from the Registrar the authenticity of the letter dated 12th September 2014, and by a reply dated 7th October 2014, the Registrar stated that she was fraudulently misled by the defendants herein into issuing the letter dated 12th September 2014. The Registrar's letter to the Applicant is annexed to the supporting affidavit as "PGM 11".
9. I have carefully considered the application herein to commit the defendants/respondents/contemnors to civil jail for 6 months. In my view the issues for consideration are as follows:
 - i. Whether the orders of this court of 23rd September 2014 were served upon the alleged

- contemnors.
- ii. Whether the fact that the alleged contemnors have filed a review herein is a good ground to deny the application.
10. To answer the first issue, it is now trite law that where an order is issued by court in the presence of counsel for a party, a party to be bound by that order cannot deny knowledge of the same. While the necessity for service of court order cannot be gainsaid, where a party is represented by counsel, it is deemed that the party is aware of the order of the court and cannot feign ignorance. In fact, as regards this matter, the alleged contemnors were all in court together with their advocate Mr. Jengo on 23rd September 2014, and so, they cannot plead ignorance of the orders of this court.
11. Secondly, it is clear from the Replying affidavit of JULIUS KARIUKI MWANGI that the alleged contemnors all along knew of the court order. Indeed, it is on that basis that after the court order, the Respondents, on 26th September 2014 wrote again to the Registrar of Companies wanting to know who the directors of the company were. This action was necessary for them as the first step to challenge the said court order. So they cannot now allege that they were not aware of the said order. It is therefore my finding that the alleged contemnors indeed were aware of the existence of the court order, and intentionally sought to disobey the same.
12. On the second issue, it is true that the alleged contemnors have filed an application for a review for the said orders issued herein on 23rd September 2014. On that ground, the alleged contemnors believe that they are not obligated to obey the court order of 23rd September 2015. They even assume that their application for review has already succeeded.

To begin with, the alleged contemnors have the right to apply for the review of the court order of 23rd September 2014. However, as long as the review has not been heard and granted, they are obligated to obey the court order. They must observe the rule of law. They were the legitimate directors of the 5th Plaintiff company at one time pursuant to the rule of law. The court has now establish that pending the hearing of the suit, the applicants were now the legitimate directors of the 5th Plaintiff company. That is also pursuant to the rule of law. If this court will allow their review and declare the alleged contemnors the legitimate directors of the 5th Plaintiff company, that will also be pursuant to the rule of law. So the deciding factor in all this is the rule of law. The orders of this court of 23rd September 2014 are the applicable rule of law now. They have not been set aside or appealed or reviewed in favour of the alleged contemnors. Those orders must be observed forthwith without any further delay.

13. The alleged contemnor have stated that the applicants are not available to be given the reign of power over the 5th Plaintiff company. This is difficult to believe to be true. The applicants shall avail themselves at the time and place that shall be directed by this court for the purposes of the said hand over.
14. In light of the foregoing paragraphs of this ruling, I make the following orders:
- a. ***This court finds the defendants herein LUCY WAITHERA MWANGI, JULIUS KARIUKI MWANGI AND JOHN IRUNGU GITHINJI in contempt of this court's order issued on 23rd September 2014.***
 - b. ***The said LUCY WAITHERA MWANGI, JULIUS KARIUKI MWANGI AND JOHN IRUNGU GITHINJI are hereby committed to civil jail for a period of six (6) months each or an alternative fine of Shillings Five Hundred thousand (Shs. 500,000/=) each.***
 - c. ***LUCY WAITHERA MWANGI shall be imprisoned at the Langata Women Prisons while JULIUS KARIUKI MWANGI AND JOHN IRUNGU GITHINJI shall be jailed at Nairobi Industrial Area Prison.***
 - d. ***The said handover shall take place at the Registered offices of the 5th Plaintiff company.***
 - e. ***The jail term above said shall be dispensed with PROVIDED and on the CONDITION that the***

said contemnors deposit with this court all the handing over documents, items, books of accounts, materials and keys, and a written undertaking and willingness to comply with the orders of 23rd September 2014.

f. *Costs of this application shall be for Plaintiffs/Applicants.*

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI THIS 29TH DAY OF APRIL 2015

E. K. O. OGOLA

JUDGE

PRESENT:

Mr. Njuguna for Plaintiffs

Mr. Jengo for Defendants

Teresia – Court Clerk