



**Pale Kenya Limited v Mwangangi (Environment and Land Case Civil Suit 102 of 2020) [2022] KEELC 3800 (KLR) (28 April 2022) (Ruling)**

Neutral citation: [2022] KEELC 3800 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 102 OF 2020**

**LC KOMINGOI, J**

**APRIL 28, 2022**

**BETWEEN**

**PALE KENYA LIMITED ..... PLAINTIFF**

**AND**

**PAULINA NGOMI MWANGANGI ..... DEFENDANT**

**RULING**

1. This is the Notice of Motion dated 25<sup>th</sup> November 2020 brought under section 1A, 1B and 3A of the [Civil Procedure Act](#) Chapter 21 Laws of Kenya and all other enabling provisions of law.
2. It seeks orders;
  - a) Spent.
  - b) That this Honourable Court be pleased to order the officer commanding Industrial Area Police Station to ensure prompt compliance with orders d (i),(ii) of the ruling made by this Honourable court on 30<sup>th</sup> October 2020.
  - c) That Notice to show cause for warrants of arrests be issued against Mr. Onesmus Kimani Ngunjiri the Director of the Plaintiff for failure to comply with court orders issued on 30<sup>th</sup> October 2020.
  - d) That costs of this application be borne by the Plaintiff.
3. The grounds in support of the application are set out on the face of the application. It is also supported by the Defendant's affidavit sworn on 25<sup>th</sup> November 2020.
4. She deponed that on 10<sup>th</sup> June 2020, the Plaintiff filed this suit against her seeking injunctive orders restraining her continuing use of the suit premises and temporary orders were granted against her and the Plaintiff took over possession of the suit premises and placed goons inside and outside the premises.



5. She further stated that her Advocates wrote to the police complaining of harassment by the Plaintiff's agents but the police did not act. She further deponed that on 30<sup>th</sup> October 2020, after hearing the Plaintiff's application interpartes, this Honourable court ordered the estate of John Mwangangi to continue having possession of the suit property and the Plaintiff's directors were served with a copy of the orders through their Advocates and the orders were also served upon all the tenants in the suit property and upon the officer commanding Industrial area police station who refused to act on the orders to date. She also deponed that the directors of the Plaintiff have refused to abide by the court orders.
6. In opposition, the Plaintiff filed the replying affidavit sworn on 29<sup>th</sup> January 2020 by its director Onesmus Kimani Ngunjiri. He deponed that the Plaintiff has always had possession and occupation of the suit property, and that the orders issued on 30<sup>th</sup> October 2020 were unjust therefore the Applicant filed an application for review. He added that the orders sought in the application cannot be issued as they overstep the basic provisions of the companies' law with respect to the relationship between the Plaintiff and its directors.
7. He also deponed that the Defendant has title to the suit land which is absolute and indefeasible and that it has always been in possession.
8. On 9<sup>th</sup> November 2021, the court with the consent of parties directed that the Notice of Motion be canvassed by way of written submissions.
9. I have considered the notice of motion and the affidavit in support. I have considered the replying affidavit, the written submissions filed on behalf of the parties and the authorities cited. The issues for determination are:-
  - i. Whether the Defendant has proved the contempt alleged against the Plaintiff.
  - ii. Whether warrant of arrest ought to be issued against Hon. Onesmus Kimani Ngunjiri, a director of the Plaintiff.
  - iii. Whether the OCS Industrial Area Police Station ought to be directed to enforce orders d(i), (ii) of the ruling made by this honourable court on 30<sup>th</sup> October 2020.
10. On the 30<sup>th</sup> October 2020, Hon. Eboso J granted the following orders:-
  - “(a) The Plaintiff's application for injunction order against the Defendant is rejected for lack of merit.
  - (b) The Plaintiff shall amend their plaint within 15 days to bring on board both the administrators of the Estate of John Mwangangi.
  - (c) Further, the Plaintiff shall bring on board the administrators of the estate of Esther Njoki Peter Muigai Kenyatta either as Defendants or as interested parties.
  - (d) Pending hearing and determination of this suit, the status quo as at the time of registration of ½ share of LR No 209/8313 in the name of the Plaintiff and at the time of filing this suit shall be maintained, meaning that:
    - i. The estate of the late John Mwangangi shall continue to have possession of the ½ share of LR NO 209/8313 but shall not dispose it or develop it further.



ii. The suit property shall neither be disposed nor charged by the Plaintiff.

(e) Cost of the application shall be in the cause.”

11. The Defendant contended that in contempt of the orders issued by this court on 30<sup>th</sup> October 2020, the Plaintiff has placed goons on the suit premises who are harassing her. Although contempt 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 court of Appeal case of *Mutitika v Baharini Farm Ltd* [1985] eKLR and the high court case of *Katsuri Limited v Kapurchand Depar Shah Limited* [2016] eKLR stated that position. The Defendant did not prove to the stated degree that the Defendant was in contempt of the orders issued by this court on 30<sup>th</sup> October 2020.
12. Be that as it may, the director of the Plaintiff appears to admit in his affidavit sworn on 29<sup>th</sup> September 2020 that the Plaintiff is in the suit property contrary to this court’s orders issued on 30<sup>th</sup> October 2020. Since it has always had possession of the suit property since then it has applied for review of the said orders. Even though the Plaintiff had filed an application for review of the said orders, it was obliged to obey the orders as they had not been set aside nor was there an order staying them pending the Plaintiff’s application seeking to vary the orders. The orders were subsisting; there is no justification of disobedience of court orders. In *Hadkinson V. Hadkinson* [1952] 2 All ER 567) cited by the court of Appeal in *Freight in Time Limited v Image Apparels Ltd* [2015] eKLR it was held that: “A party who knows of an order, whether null and void, regular or irregular, cannot be permitted to disobey it..... 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 and 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”.
13. The Defendant sought enforcement of orders d (i) and (ii) of the orders issued on 30<sup>th</sup> October 2020. They are orders for maintenance of status quo entailing that the estate of the late John Mwangangi shall continue to have possession of the ½ share of LR No 209/8313 but shall not dispose it or develop it further. Ordinarily, the order does not call for enforcement. However, the circumstances of this case are special in that the Defendant was initially on the suit premises. The court then issued the Plaintiff/Respondent temporary orders pending hearing of the application for injunctions dated 2<sup>nd</sup> June 2020 which led to the Plaintiff entering the suit property. Subsequently, after hearing the hearing of the said application interpartes, the court reversed its initial orders and directed that the Defendant should have possession of the suit property pending hearing of the case. There is need to enforce the said orders in order which requires withdrawal of the Plaintiff from the suit premises. The Plaintiff has admitted to be in possession as it awaits review of the orders issued on 30<sup>th</sup> October, 2020. Having opined that order d(i) and (ii) should not be varied, the order should be enforced as prayed by the Defendant.
14. On the issue whether warrants of arrest should be issued against Mr. Onesmus Kimani Ngunjiri; who is a director of the Plaintiff. It is my view that the Defendant should have first lifted the Plaintiff’s veil to be able to cite its directors. I rely on the case of *Geoffrey Kathuri Kison & 10 others v East African Portland Cement Co. Ltd & 5 others* [2021] eKLR where the court of Appeal adopted the observations of Mativo J in *Katsuri Limited v Kapurchand Depar Shah* [2016] eKLR, where in considering contempt by a director of a company, he observed; “The alleged contemnor is a director of the company. He is not a party to these proceedings in his personal capacity. The company is a legal entity. The proper procedure for the applicant was first to apply to lift the corporate veil then go for the directors in their personal capacities.”



15. In the case of *Mutitika vs Baharini Farm Ltd* [1985] KLR 229, 234 it was held that:-

“.....the standard of proof in contempt proceedings must be higher than proof on a balance of probabilities at most, but not exactly, beyond reasonable doubt....The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit in criminal cases. It is not safe to extend it to an offence which can be said to be quasi criminal in nature.....”

16. Similarly in the case of *Katsuri Limited vs Kapurchand Depar Shah* [2016] eKLR it was stated that:-

“As pointed out earlier in an application of this nature we are dealing with the liberty of a person and such an order ought to be granted in the clearest circumstances as evidently demonstrated by the authorities cited herein.”

17. I find that the Defendant/Applicant has failed to demonstrate that the Hon. Onesumus Kimani Ngunjiri, one of the directors of the Plaintiff/Respondent has intentionally and disobeyed the orders granted on 30<sup>th</sup> October 2020. I decline to issue warrant of arrest against him.

18. As stated earlier, the orders granted in terms of d(1) (ii) ought to be enforced as they have not been varied and/or set aside.

19. In conclusion, I find that this application partly succeeds and allowed in the following terms:-

- a. That the OCS Industrial Area Police Station is hereby directed to ensure compliance of orders d(i) and (ii) of the ruling made by this honourable court on 30<sup>th</sup> October 2020.
- b. That costs of this application do abide the outcome of the main suit.

**DATED, SIGNED AND DELIVERED NAIROBI THIS 28<sup>TH</sup> DAY OF APRIL 2022.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

No appearance for the Plaintiff

No appearance for the Defendant

Steve - Court Assistant

