



**Mungai & another v Cheska Agencies Limited & another (Environment & Land Case 388 of 2017) [2024] KEELC 1756 (KLR) (9 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 1756 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 388 OF 2017**

**LN MBUGUA, J**

**APRIL 9, 2024**

**BETWEEN**

**MIGUI MACHARIA MUNGAI ..... 1<sup>ST</sup> PLAINTIFF**

**FLAVIA SUSAN KALANDE ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**CHESKA AGENCIES LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**ELDORADO GARDENS LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling relates to the sentencing of the 1<sup>st</sup> Defendant's directors following this court's ruling of 28.9.2023 which found that they were in contempt of this court's orders.
2. The 1<sup>st</sup> Defendant's director, one Munira Wairimu Mwinyi filed a further affidavit sworn on 11.12.2023 in mitigation. She avers that she was a co-director of the 1<sup>st</sup> Defendant with her brother, Prof. Dr. Mwinyikione Mwinyihaji until 2016 when he formerly left. She informed her advocates to file documents to that effect, but they failed to do so, thus his name still appears in the 1<sup>st</sup> Defendant's list of directors (CR12).
3. She admits that the 1<sup>st</sup> Defendant entered into an agreement for sale of Nairobi /Block 129/289 on 8.9.2016 with the Plaintiffs and also admits that she sold the property 5 years later despite this court's orders prohibiting the same. She blames her advocates for misadvising her that the previous agreement had expired. In addition, she avers that she was desperate to sell the property to facilitate her brother's treatment as he had suffered a stroke. Finally, the property was also charged at Kenya Commercial Bank attracting huge penalties due to their inability to service the loan facility.
4. She avers that she is a law abiding citizen and is remorseful and is willing to refund the deposit of purchase price as per the terms and conditions set out in the initial agreement for sale.



5. I have considered the averments proffered by the 1<sup>st</sup> defendant in mitigation. The CR12 of the 1<sup>st</sup> Defendant shows that its directors are Prof. Dr. Mwinyikione Mwinyihaji and Munira Wairimu Mwinyi. The 1<sup>st</sup> Defendant disobeyed this court's orders restraining it from selling the suit land. Court orders must be obeyed, and there is no excuse for disobeying court orders. The reason why power is vested in courts to punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice, See - *Africa Management Communication International Limited v Joseph Mathenge Mugo & another* [2013] eKLR. There is no evidence to indicate that the 1<sup>st</sup> defendant sought the intervention of the court in having a review of the restraining orders against them. To this end, I find that 1<sup>st</sup> Defendant's directors do not deserve this court's mercy.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF APRIL, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Mungai for Plaintiff

Muriithi holding brief for Githui for 1<sup>st</sup> Defendant

Court assistant: Eddel

