Sedco Consultants Limited v Kararaho; Rop (Interested Party) (Environment and Land Miscellaneous Application E011 of 2024) [2024] KEELC 5154 (KLR) (11 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5154 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E011 OF 2024

JM ONYANGO, J

JULY 11, 2024

IN THE MATTER OF: CONTEMPT APPLICATION TO CITE THE RESPONDENT FOR CONTEMPT OF COURT

AND

IN THE MATTER OF: SECTION 5 OF THE JUDICATURE ACT CAP 8 OF LAWS OF KENYA

BETWEEN

BETWEEN

SEDCO CONSULTANTS LIMITED ..... APPLICANT

AND

VERONICAH WANGUI KARARAHO ..... RESPONDENT

AND

EMMY CHEBICHI ROP ..... INTERESTED PARTY

(Being a Contempt Application arising from Business Premises Rent Tribunal Case No. Eldoret E016 of 2024)

RULING

1. What is coming up for determination is the Agent/Applicant's Notice of Motion dated 18th May, 2024 which seeks the following orders:

    i. That the matter be certified as urgent and be heard on priority basis;

    ii. That this Honourable Court does find the Respondent's action of locking the entrance to the premises by herself and hiring goons stationed at the entrance of the premises with the

intention of blocking the Tenant's access to the premises and to carry out renovation goes contrary to the Court Orders issued on 13th February, 2024 by Hon. Patricia May.

iii. That as a result of the Respondent's actions above, this Honourable Court be pleased to cite the Respondent for wilful disobedience of the Orders of the Business Premises Rent Tribunal issued on 13th February, 2024.

iv. That this Honourable Court be pleased to issue a warrant of arrest against the Respondent to be brought before this Honourable Court to show cause why she should not be punished for contempt of the Orders of the Business Premises Rent Tribunal issued on 13th February, 2024.

v. That this Honourable Court be pleased to commit the Respondent to civil jail for 6 months or such other period as the court may deem fit for contempt of the Orders of the Business Premises Rent Tribunal issued on 13th February, 2024.

vi. That the Respondent be condemned to purge the contempt by an order directing her to remove from the premises the hired goons and allow access of the premises for renovations by the Tenant, with immediate effect.

vii. That the cost of this Application be borne by the Respondent.

2. The Application is supported by an Affidavit of even date sworn by Paul Rutto, a Director of the Agent/Applicant herein, who is the lawful Estate Agent/Appointed Manager of Hasham Lalji Properties Limited, the Registered Owner of Land Parcel Eldoret Municipality Block 6/64 (the suit premises). He deponed that the Applicant's duties include managing, maintaining and collecting rent accruing from the property. He deponed that pursuant to an Application dated 12th February, 2024 the Business Premises Rent Tribunal issued an Order on 13th February, 2024 inter alia restraining the Respondent from entering the suit Premises, harassing the current tenant, unlawfully evicting her or further interfering with the tenancy activities of the Tenant and the Landlord herein. He deponed that the said Orders were duly served upon the Respondent as evidenced by a copy of the Affidavit of Service annexed to the Application, and there is no doubt that the parties had full knowledge of the terms of the Orders.

3. He averred that the Respondent willfully and deliberately blocked access to the suit Premises in a bid to inhibit the Tenant from carrying out renovations and deny her peaceful and quiet possession thereof. Mr. Rutto averred that the Respondent has also stationed hired goons at the entrance of the suit premises. He averred that these deliberate actions of the Respondent have barred the Tenant's access and use of the suit premises despite paying rent to the Landlord, actions that contravene the orders issued by the Tribunal. He deponed that this Court has the power to punish the Respondent for contempt of court orders. He expressed belief that in order to uphold the rule of law and good order, the authority and integrity of the court and its sacrosanct status must be jealously guarded. Further, that the Court should not be repressed from its duty to deal firmly with the Respondent, who is undoubtedly a contemnor.

4. The Respondent, Veronicah Wangui Kararaho, filed a Replying Affidavit dated 8th April, 2024 stating that this court has no jurisdiction to deal with this application. That the court only has appellate jurisdiction over matters from the Business Premises Rent Tribunal (BPRT) hence it is divested of original jurisdiction in matters relating to the Tribunal including contempt of court. She averred that the application breaches the statutory framework for enforcement of a decision of the BPRT. That under Part 81 of the English Civil Procedure Rules, 2020 the superior court has no jurisdiction to deal with contempt of court in respect of the decision of the BPRT. Further, that the application offends Rule 81.2 of the said Rules and that the order was not endorsed with a penal notice.

5. The Respondent deponed that the Applicant has not disclosed to the court fundamental information that led to the grant of the orders subject of this contempt application. That the orders were impugned by the Respondent through her application dated 15th February, 2024 which has a ruling date before the BPRT. She deponed that the applicant has not filed a response to the Respondent's Application, which challenges the orders with regards to jurisdiction of the Tribunal that issued them, but moved to this court with the instant application. The Respondent alleged that this Application is a breach of the sub judice rule. She deponed that she was instructed by the police together with Ms. Limiso, the Applicant's manager, to each lock the premises with their own padlock as they await the decision of the BPRT. The Respondent denied having hired goons as alleged. She deponed that section 29 of the *Environment and Land Court Act* does not confer on the court jurisdiction to deal with contempt of an order made by the BPRT. She asked that the application be dismissed with costs.

6. In addition to the Affidavit, the Respondent also filed a Notice of Preliminary Objection to the Application Notice of 18th March, 2024 raising the following grounds:-

    a. That the court is bereft of jurisdiction to deal with the application for contempt.

    b. That the application fails to comply with rule 81 of the English Civil Procedure Rules, 2020.

    c. That the Application is sub judice.

7. On 25th April, 2024 the court issued directions that the Application and the Preliminary Objection would be dealt with simultaneously and that parties were to file and exchange written submissions on both. The parties complied and filed their written submissions.

Applicant's Submissions

8. The Applicant's Submissions are dated 10th June, 2024. Counsel started by pointing out that the applicable law with regards to contempt of court is Section 5(1) of the *Judicature Act* and the procedure of approaching the court is set out at Rule 81.4 of the English Civil Procedure Rules (Christine Wangari Gachege vs Elizabeth Wanjiru Evans & 11 Others (2014) eKLR). Relying on the case of North Teti Farmers Co. Ltd vs Joseph Nderitu Wanjohi (2016) eKLR, Counsel submitted that leave is not required in a contempt of court application where committal proceedings relate to breach of a judgment, order or undertaking. With regards to the form of the application, Counsel cited the case of Clerk, Nairobi City County Assembly vs Speaker, Nairobi City County Assembly & Another; Orange Democratic Party & 4 Others (Interested parties) (2019) eKLR, submitting under Article 159 of *the Constitution*, courts are required to administer justice without undue regard to procedural technicalities. Counsel submitted therefore that the instant application is competent as filed.

9. Counsel added that the threshold for a Preliminary Objection is that it must raise a pure point of law and it is argued on the assumption that all facts pleaded by the other side are correct. Counsel also submitted that any assertion that bears factual aspects calling for proof or needing evidence for its authentication or one that seeks the discretion of the court is not a true preliminary objection. He cited the cases of Mukisa Biscuits Manufacturing Co. ltd vs West End Distributors Ltd (1969) EA 696, Oraro vs Mbaja (2005)1 KLR 141 and JSK vs WKW (2019) eKLR. Counsel argued that the grounds raised in objection would need the court to call evidence to ascertain the same. That for this reason, the PO is ousted from being a pure point of law as the issues raised therein cannot be dispensed with preliminarily. Counsel submitted that the P.O. lacks merit, is based on an erroneous interpretation of the law and ought to be dismissed. On whether the Respondent was in contempt, Counsel argued that the test for establishing contempt was elaborated in Samuel M.N. Mweru & Others vs National Land commission and 2 Others (2020) eKLR.

10. Counsel stated that there is no doubt that the BPRT issued orders on 13th February, 2024 and the Respondent is aware of the said orders having applied on 15th February, 2024 to have them set aside. Counsel submitted that apart from being aware of the orders, the Respondent was served with orders, and having proved knowledge, the Respondent's actions amount to willful and deliberate disobedience. Counsel submitted that since the court orders have not been set aside, varied or appealed against, the Respondent had no option but to abide by them. Counsel cited Shimmers Plaza Limited vs National Bank of Kenya Limited (2015) eKLR, Basil Criticos vs Attorney General & 8 Others (2012) eKLR and Africa management Communication International Limited vs Joseph Mathenge Mugo & Another; Civil Case No. 242 of 2013 among other cases. Counsel for the Applicant urged the court to uphold the rule of law and find that the Respondent knowingly and willfully disobeyed the orders of the BPRT and should be cited for contempt. Counsel pointed out that the Respondent has not denied locking the premises in breach of the court orders.

Respondent's Submissions

11. The Respondent's Submissions are dated 22nd May, 2024 where Counsel submitted that this court is a superior court clothed with appellate jurisdiction in respect of matters from the BPRT under Section 15 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* (hereinafter referred to as 'the Act'). He argued that this court does not have original jurisdiction over matters arising out of the BPRT and cannot deal with the application herein. He relied on Calyx Red Limited vs Raphael Torome (The Administrator of the Estate of Grace Wairimu Torome) & Another (2022) eKLR. Counsel argued that the application breaches the statutory framework for enforcement of a decision of the BPRT, which is vested in the lower court and not this court. He cited the case of Gilbert Otieno & Another vs Benard Mushivoji & Another (2018) eKLR, as well as Cherono (the Administrator of the Estate of the Late Henry Rotich) vs Rotich, Misc. App. E001 of 2023 (2023) KEELC 21867 (KLR).

12. Counsel also submitted that Section 29 of the Environment and Land Court (ELC) Act only empowers the court to punish for contempt of court orders issued by the ELC Court only. Counsel argued that under Part 81 of the English Civil Procedure Rules, 2020 the superior court has no jurisdiction to deal with contempt of court orders in respect of a decision of the BPRT. Further, that the application flouts Rule 81.2 of the said Rules. It was Counsel's submission that the application also offends Rule 81.4(2)(e) because the order was not endorsed with a penal notice (John Mwangi Muhia & 2 Others vs Justus Gituma T/A Dona Snacks and Another (2014) eKLR). Counsel further argued that the applicant is guilty of non-disclosure for not informing the court that the Order of the BPRT was impugned by the Respondent's application dated 15th February, 2024 seeking to set the orders aside, and which application is pending delivery of ruling before the Tribunal.

13. Counsel asserted that the instant Application is an abuse of the court process and is clearly in breach of the sub judice rule captured at Section 6 of the *Civil Procedure Act*, CAP 21 Laws of Kenya. Counsel reiterated that the Police in Eldoret through the Officer Commanding Police Division, Eldoret West instructed the Respondent and Applicant's Manager to close the premises each with their own padlock to await the determination of the BPRT. Counsel submitted that the Applicant seeks to forcefully dispossess the Respondent of her exclusive occupational rights of the suit premises after the police instructed the parties to await the decision of the BPRT. Counsel asked that the application be dismissed with costs.

Analysis and Determination

14. Having considered the application as filed herein, the Affidavits filed in support of and in opposition to the application, the submissions of counsel and authorities relied on, the following issues arise for consideration by this court:

    a. Whether the Respondent's Preliminary Objection is merited

    b. Whether the Respondent is in contempt of the orders issued by the BPRT

a. Whether the Respondent's Preliminary Objection is merited

15. According to the Respondent, this court has no jurisdiction to entertain the instant application, and that the court clothed with jurisdiction to deal with it is the subordinate court. It is prudent that this court deals with the matter of jurisdiction first as it has the ability to determine this suit preliminarily without considering its merits. It goes without saying that jurisdiction is primordial in every suit and it has to be there when the suit is filed, because a suit is filed without jurisdiction is dead on arrival and cannot be remedied. In Owners of the Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd. (1989) eKLR the court held that:-

> " Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given."

16. The orders subject matter of this application emanated from the BPRT. Indeed, the *Landlord and Tenant (shops, Hotels and catering Establishments) Act* at Section 14 provides that a decision of the BPRT may be enforced as an order of the subordinate courts. Section 14 reads:-

> " 14. Filing of determination or order in court
>
> (1) A duly certified copy of any determination or order of a Tribunal may be filed in a competent subordinate court of the first class by any party to the proceedings before such Tribunal or by the Tribunal, and on such copy being filed and notice thereof being served on the Tribunal by the party filing the same such determination or order may, subject to any right of appeal conferred by or under this Act, be enforced as a decree of the court.
>
> (2) The Tribunal shall, upon being served with a notice under subsection (1) of this section, or upon its own filing of such copy in the court, transmit to the court its record of the proceedings before it, and the same shall be filed by the court along with the certified copy of the determination or order."

17. It is for this reason that the Respondent has claimed that the correct court for enforcement of the orders is the subordinate court and not this court. While that is true for enforcement of orders and decrees of the BPRT, it is not entirely the position where contempt of court applications are concerned. Initially,

the Magistrate's Courts did not have all encompassing jurisdiction to entertain contempt proceedings, but currently, they do have jurisdiction to punish for contempt. This jurisdiction is donated under Section 10 of the Magistrate's Court Act, which specifically provides as follows:-

> "(1) Subject to the provisions of any other law, the Court shall have power to punish for contempt.
>
> (2) A person who, in the face of the Court-
>
> (a) assaults, threatens, intimidates, or insults a magistrate, court administrator, judicial officer, or a witness, during a sitting or attendance in Court, or in going to or returning from the Court;
>
> (b) interrupts or obstructs the proceedings of the Court; or
>
> (c) without lawful excuse disobeys an order or direction of the Court in the course of the hearing of a proceeding, commits an offence
>
> (3) In the case of civil proceedings, the willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court constitutes contempt of court."

18. The Court of Appeal in Ramadhan Salim vs Evans M. Maabi T/A Murhy Auctioneers & another (2016) eKLR buttressed the position that Magistrate's Courts have jurisdiction to punish for contempt of its orders by holding that:-

> "From the above, it does appear that the magistrate did not have jurisdiction to entertain the contempt proceedings as he correctly held. That jurisdiction belonged to the High Court or Court of Appeal. It is instructive that when the High Court and this Court exercise that jurisdiction, it extends to the contempt committed in the subordinate court. The only jurisdiction the magistrate's court could exercise when dealing with contempt of court is, if it is committed in the face of the court. However, the *Magistrates' Courts Act*, 2015 which came into force on 2nd January 2016 now gives the magistrate's courts unlimited jurisdiction to punish for contempt."

19. However, a reading of Section 10 of the Magistrate's Court Act reveals that the statute does not prescribe the punishment that the subordinate courts may render once it makes a finding that a party is guilty of contempt. Section 8(10) of the Magistrate's Court Act provides that the Chief justice may make rules to regulate procedures relating to contempt. This is yet to be done however, and it is for this reason that this court may still handle matters of contempt arising from the subordinate courts.

20. For this court, the power to punish for contempt is provided for under Section 29 of the ELC Act, which empowers it to punish for contempt of orders issued by the ELC Court. The Respondent argued that since the jurisdiction to punish for contempt under the said section 29 is limited to orders issued by this court, then it is divested of jurisdiction to deal with the current application. However, even though Section 29 of the *Environment and Land Court Act* restricts this court to orders of the

Environment and Land Court, Section 5 of the *Judicature Act* gives this court, being of the same status of the High Court, blanket power to punish for contempt. Section 5(1) of the *Judicature Act* provides:-

> " The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England and that power shall extend to upholding the authority and dignity of subordinate courts."

21. Consequently, the argument that the Court herein lacks jurisdiction to entertain the current application lacks merit. That ground of the PO therefore fails.

22. The second ground is that the Application offends Part 81 of the English Civil Procedure Rules which requires the order to be endorsed with a penal notice. I would imagine that the purpose of the penal notice is to serve as a warning of the consequences of failure to abide by the court orders. The Respondent cannot however claim that the lack of endorsement with a penal notice vitiates this application. She knew the effect and or consequences of not obeying the order even without the penal notice and that is why she lodged an application to have the said orders set aside. However, instead of waiting for the outcome of the application, she decided to muddy her hands by failing to adhere to the orders of the BPRT. That aside, the Respondent's advocate in his submission indicated that the ruling on the Respondent's application was set to be delivered on 25th March, 2024. Notably, the Respondent's submissions are dated 27th May, 2024 way past the alleged ruling date and the Respondent gave no indication whatsoever of the status of the said application.

23. The final point of objection is that the application is sub judice since the matter is still pending before the BPRT. The sub judice rule in Kenya is founded on Section 6 of the Kenyan *Civil procedure Act* which provides that:-

> " No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed."

24. Addressing the issue of sub judice, the Supreme Court of Kenya in Kenya National Commission on Human Rights vs Attorney General; Independent Electoral & Boundaries Commission & 16 Others (Interested Parties) [202] eKLR stated as follows:

> " The term 'sub-judice' is defined in Black's Law Dictionary 9th Edition as: "Before the Court or Judge for determination." The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives."

25. The Respondent has indicated from her pleadings and her submissions that before the BPRT, she is agitating for her exclusive occupational rights over the suit premises. As opposed to the matter before the BPRT, the main issue in the instant application is the alleged contempt of the orders issued by the BPRT by the Respondent. It follows that the two judicial forums are dealing with different issues/subject matter. Consequently, it cannot be said that the application herein is sub judice and therefore this ground also fails. Having failed on all three grounds, the conclusion is that the Notice of Preliminary objection fails in its entirety.

b. Whether the Respondent is in contempt of the orders issued by the BPRT

26. Having settled the issues raised in the PO, the court must now turn to whether the Respondent is in contempt of the orders issued by the BPRT. As stated earlier, the law governing contempt of court proceedings in Kenya is Section 5 of the *Judicature Act*, through which Kenya courts apply the English law applicable in England at the time the alleged contempt was committed. The test for establishing whether a party is in contempt was laid down in the case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR, where the court held that:-

> " 40. It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove;
>
> i. the terms of the order,
>
> ii. Knowledge of these terms by the Respondent,
>
> iii. Failure by the Respondent to comply with the terms of the order.
>
> Upon proof of these requirements, the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book Contempt in Modern New Zealand who succinctly stated:-
>
> > 'There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-
> >
> > (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
> >
> > (b) the defendant had knowledge of or proper notice of the terms of the order;
> >
> > (c) the defendant has acted in breach of the terms of the order; and
> >
> > (d) the defendant's conduct was deliberate'."

27. I have seen an extract of the order issued on 13th February, 2024 a copy of which is annexed to the Applicant's Supporting Affidavit as Annexure PR-3. The order therein reads:

> "1. That pending the hearing and determination of this Application, the Respondent by herself, servants and or agents be and are hereby prohibited and restrained from entering the premise herein, harassing the current tenant or any tenant or the Agent herein, unlawfully evicting the tenant or further interfering with its tenancy activities of the tenant herein and the Landlord herein, in whatsoever manner at the demised premises known as L.R. No. Eldoret/Municipality Block 6/64.
>
> 2. That pending the hearing and determination of this Application, the Respondent herein, Veronicah Wangui Kararaho be and is hereby restrained from subletting, developing, renovation, partitioning, painting or otherwise dealing with the demised premises L.R. No. Eldoret/Municipality Block 6/64 in any other manner"
>
> 3. That the Officer Commanding Central Police Station Eldoret or any other Police Station that is near to the demised premises do assist in compliance of the orders and ensures peace prevails.
>
> 4. That hearing on 27th February, 2024.
>
> 5. That Applicant to serve and file Affidavit of Service."

28. The order exists and it was indeed issued on 13th February, 2024. It is clear and unambiguous and the Respondent has not claimed otherwise, or claimed to not have understood the contents therein. The order clearly indicates that it was made in the absence of both parties, but the Applicant was directed to serve and file an Affidavit of Service. In compliance to the directions on service, the Applicant did serve the order on the Respondent. Daniel Shiraho, a Court Process Server, swore an Affidavit on 15th February, 2024 indicating that he received the pleadings as well as the order dated 13th February, 2024 from the Applicant's Advocates on record and served them on the Respondent's Advocates as well as the Respondent herself. The Respondent therefore was fully aware of the orders subject matter of this suit. For the avoidance of doubt, she has not claimed to not be aware of the orders.

29. The third limb of the test is whether the Respondent is in breach of the orders. The Applicant claims that the Respondent has breached the said order by locking her out of the premises. This allegation, the Respondent has not even tried to deny. This court needs to remind parties of the obligation to obey and abide by court orders unless and until they are discharged. In the case of Econet Wireless Kenya Limited vs Minister for Information and Communication of Kenya Authority (2005) eKLR, the court held that:-

> "It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.

30. The Respondent instead deponed that she challenged the orders by filing an application dated 15th February, 2024 which challenges the orders with regards to jurisdiction of the tribunal that issued them, seeking to set aside the said orders. She deponed that the Applicant has not filed a response to the said application, but moved to this court with the instant application. What stands out is that the orders issued by the BPRT though challenged, have not yet been discharged. The Respondent is thus bound to obey them until and unless they are reviewed, set aside, varied or otherwise discharged. In Woburn Estate Limited vs Margaret Bashforth [2016] eKLR the Court of Appeal cited the decision in Refrigeration and Kitchen Utensils Ltd vs Gulabchand Popatlal Shah & Another, Nairobi Civil Application No.39 of 1990, where it was observed that:-

> "A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid-whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question...he should apply to the court that it might be discharged. As long as it exists it must not be disobeyed."

31. In determining whether the conduct of a party was deliberate, the court enquires into whether it was intentional and willful in a manner that constitutes contempt. As already noted, the Respondent is fully aware of the orders of the BPRT. She has not denied locking out the Applicant or the tenant of the premises contrary to the orders of the Tribunal. Her excuse that she was acting on directions from the police is not only misconceived but misguided as the police cannot issue directives that are contrary to orders of a lawful tribunal. This appears to me to be the actions of a party who has made up her mind to violate court orders even though she knows of their existence and has even approached the same court that issued them to have the orders set aside.

32. The deliberate conduct is also clear from her repeated statement that she challenged the orders when she filed the application to set them aside. The Respondent must know that she is not a court unto herself and has no authority to disregard, ignore or rubbish court orders. Moreover, she is represented by Counsel who should have advised her on the repercussions of disobeying court orders. Instead, Counsel also perpetuated this misguided view that filing an application to set aside was enough to render the court orders useless. It is clear that she is conveniently trying to use this lack of service of the orders as an excuse to evade compliance thereof.

33. The assertion that there were directions from the police to the effect that the Respondent and a Manager of the Applicant were to each lock the premises with their own padlock is also just a mere allegation by a party who has decided to rubbish the orders of the tribunal. It goes without saying that s directive of the Police cannot supersede direct orders of a court issued over premises subject matter of a suit before it. No evidence has been issued of the said direction and that the said Manager of the Applicant did in fact also put a padlock over the suit premises. The orders of 13th February, 2024 only asked the Police to assist to ensure compliance of the court orders and ensure peace prevails, it did not ask the Police to issue directions to counter the orders of the court.

34. With regards to the standard of proof, in Gatharia K. Mutikika vs Baharini Farm Ltd (1985) KLR 227 the court explained the standard of proof for civil contempt, holding that:-

> " In, Re Breamblevale Ltd [1969] 3 All ER 1062, Lord Denning MR. (as he then was), at page 1063, had this to say,
>
> > 'A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily proved. To use the time– honoured phrase, it must be proved beyond reasonable doubt'.
>
> With the greatest possible respect to that eminent English judge, that proof is much too high for an offence "of a criminal character" and, ipso facto, not a criminal offence properly so defined. We agree with Mr. Khaminwa's submissions in this respect. In our view the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt. We envisage no difficulty in courts determining the suggested standard of proof. 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 offence which can be said to be quasi – criminal in nature Winn LJ on page 1064 was in our view right in saying that the guilt has to be proved 'with such strictness of proof ... as is consistent with the gravity of the charge'."

35. The facts of this case and the evidence adduced lead me to believe that the Applicant has discharged its evidentiary burden with regards to the Respondent's contempt. The Applicant has established all the limbs of the test laid out in the Samuel M.N. Mweru Case (supra) to the required standard. This court therefore finds that the Respondent is guilty of contempt of the orders issued by the BPRT. The Applicant's application is therefore merited and the following orders do issue:

    a. A declaration be and is hereby issued that the said Veronicah Wangui Kararaho, the Respondent herein be cited for contempt.

    b. A notice is be and is hereby issued to the said Veronicah Wangui Kararaho, the Respondent herein to appear before this court on 30th September, 2024 for mitigation before a sentence is meted out.

    c. That the Respondent herein shall bear the costs of this application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 11TH DAY OF JULY 2024.

.....

J.M ONYANGO

JUDGE

In the presence of;

1. Miss Amuka for Mr. Otwal for the Applicant

2. Mr. Wambua Kigamwa for the Respondent

Court Assistant: Brian