



**Hariom Constructions Limited v Verus Praedium Realtors Limited & 2 others;
National Bank of Kenya Limited (Interested Party) (Commercial Case E170 of 2024)
[2025] KEHC 158 (KLR) (Commercial and Tax) (17 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 158 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E170 OF 2024
JWW MONG'ARE, J
JANUARY 17, 2025**

BETWEEN

HARIOM CONSTRUCTIONS LIMITED PLAINTIFF

AND

VERUS PRAEDIUM REALTORS LIMITED 1ST DEFENDANT

SHALOM G NYAGI 2ND DEFENDANT

BENJAMIN M NJAGI 3RD DEFENDANT

AND

NATIONAL BANK OF KENYA LIMITED INTERESTED PARTY

RULING

1. For determination is the Plaintiff's Notice of Motion application dated 25/6/2024 filed interalia under Section 5 of the *Judicature Act* and Order 40 Rule 3 of the Civil Procedure Rules.
2. The Plaintiff sought an order to find the Interested Party's managing director, George Odhiambo, in contempt of the court order issued on 30/4/2024. Further, the Plaintiff sought orders to have the managing director of the Interested Party committed to civil jail until the Interested Party honours the court order of 30/4/2024 and an order to fine him the sum of Kshs.2,000,000/-.
3. The application is premised on the grounds that this court issued an order on 30/4/2024 directing the opening of a joint interest earning account in the names of the parties advocates to hold the sum of Kshs.23,000,000/- pending determination of this suit; that pursuant to the said order, the Interested



- Party partially complied by opening the joint interest account in the names of the parties' advocates but failed to transfer the sum of Kshs.23,000,000/- to the account in defiance of the order.
4. The Plaintiff argued that the Interested Party is therefore in contempt of the court order of 30/4/2024 and prayed to have its chief executive officer committed to civil jail.
 5. In opposition, the Interested Party filed a replying affidavit sworn on 9/7/2024 by Richard Orora, the branch operations manager, Hill Branch.
 6. He averred that the court order dated 30/4/2024 directed that Kshs. 23 million be held in a joint account in the names of the advocates for the Plaintiff and Defendants; that the Plaintiff's advocate requested the transfer of the Kshs. 23 million from the account of the 1st Defendant to the joint account however the Interested Party could not comply with this request as the account had insufficient funds, holding only Kshs. 19,285.95/= as of 28/6/2024.
 7. The Interested Party contended that it had not refused to comply with the court order and was willing to facilitate the transfer once the account was adequately funded.
 8. The Defendants jointly opposed the instant application through the replying affidavit sworn on 1/8/2024 by Benjamin Mutahi Njagi, the managing director of the 1st Defendant company.
 9. Mr. NJAGI confirmed the successful opening of the joint interest account by the Interested Party but refuted the Plaintiff's claim regarding the Defendants having a balance of Kshs. 300,000,000/- in their National Bank account, clarifying that the account is a loan account for a construction project and the Defendants do not have access to these funds.
 10. Mr. Njagi outlined the strict procedures followed for disbursing loan amounts to the project contractor, which involves verification by quantity surveyors and project managers before payment is made directly to the contractor and stated that the Defendants have contractual obligations to pay various professionals and laborers involved in the construction project, including settling Kshs. 45 million for work done and materials procured before the Plaintiff's services were terminated.
 11. He asserted that the Plaintiff's suit and a related suit have adversely affected the bank's release of funds and the contractor's confidence, impacting the Defendants' ability to fulfill their financial obligations and that the Defendants have already paid Kshs. 22,010,000/= out of the total Kshs. 45,000,000/= owed to the Plaintiff in two installments and accuses the Plaintiff of disrupting the payment process by filing the suit.
 12. Mr. Njagi averred that the Plaintiff's subsequent application for committal is seen as part of a concerted effort to hinder the mall's construction.
 13. The Plaintiff filed a supplementary affidavit in response to the Interested Party's replying affidavit sworn on 9/7/2024.
 14. In the supplementary affidavit, the Plaintiff's managing director reiterated that the Interested Party only partially complied with the court order dated 30/4/2024 and that the Interested Party should have sought to review the court order if they were unable to comply fully with the same rather than complying partially.
 15. That the bank statement provided by the Interested Party did not show the transactions in the 1st Defendant's account between the dates 21/4/2024 and 6/6/2023 and the bank balance as at 30/4/2024 when the orders were granted.



16. Moreover, the Plaintiff's Managing Director averred that on 20/6/2024, the 1st Defendant's account was debited with the sum of Kshs.32,587,070.30/- but the Interested Party still failed to transfer the sum of Kshs.23,000,000/= to the joint interest account.

Analysis and Determination:

17. The Plaintiff filed written submissions dated 23/10/2024, the Defendants filed submissions dated 31/10/2024 while the Interested Party did not file any submissions.

18. I have analyzed and considered the pleadings and submissions of the parties as filed in this matter. To my mind I note that the issue for determination is whether the Interested Party is guilty of contempt of court for disobeying the court order issued on 30/4/2024.

19. Contempt of court was described in Sheila Cassatt Issenberg & Another v Antony Machatha Kinyanjui [2021] eKLR where the court stated the following:

“As was again stated by the Supreme Court of India in Mahinderjit Singh Bitta v Union of India & others 1 A No. 10 of 2010 (13th October, 2011):

In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and willful violation of the order of the court, even to constitute a civil contempt. Every party is before the court and even otherwise, is expected to obey the orders of the court in its spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution.”

20. I am persuaded and concur with the authority above; indeed, for one to be guilty of contempt of court, he/she/it must intentionally and willfully disobey a court order. From the record I note that the court order of 30/4/2024 gave the following directions:

- “1. 1. That the interim orders issued by this court for freezing the Defendant's account in National Bank of Kenya (NBK) Account No.0106xxxxxxxxx Harambee Avenue Branch and Co-operative Bank No.0011xxxxxxxxx be heard and lifted.
2. That a sum of Kshs.23 million shall be held in a joint interest earning account in the joint names of the Advocates for both parties, at National Bank of Kenya (NBK) pending the hearing and disposal of this suit.
3. That this application be and is hereby marked spent.
4. That the matter shall be mentioned for pretrial compliance on 27th May 2024 before the Deputy Registrar.”

21. Having read the proceedings of the court on 29/4/2024, I see that indeed the Defendant's counsel informed the court that the 1st Defendant's account opened in the Interested Party had money. This assertion led the parties to enter into a consent whereby the Interested Party agreed to transfer the sum of Kshs.23,000,000/= to a joint account.

22. It is not disputed that the Interested Party partially complied with the order of the court by allowing the 1st Defendant access to its funds in account number No.0106xxxxxxxxx held in its Harambee Avenue Branch and by facilitating the opening of a joint interest earning account in the names of the parties' advocates.



23. However the sum of Kshs.23,000,000/- was not transferred to the joint account. The Plaintiff claimed that the Interested Party failed to transfer the said sums contrary to the court order. Further that as of 20/6/2024, the 1st Defendant's account was debited with the sum of Kshs.32,587,070.30/- but still the Interested Party failed to transfer the sum of Kshs.23,000,000/- from the 1st Defendant's account number No.0106xxxxxxxxxx to the joint account.
24. On the other hand, the Interested Party asserted that it could not transfer such a sum from the 1st Defendant's account number No.0106xxxxxxxxxx as the account was not funded as at 30/4/2024.
25. The Interested Party provided a statement of account of the 1st Defendant's account running from 10/1/2024-20/6/2024 which indicated that the 1st Defendant's account number 0106xxxxxxxxxx held an amount of only Kshs.19,285/- as of 20/6/2024. The statement is annexed as 'RO2' in the interested party's replying affidavit.
26. In the statement, there is no entry for the date 30/4/2024, when the court order was issued, the closest dates being 21/4/2024 when the account had a Kshs.0.00 balance and 6/6/2024 when the account had a balance of Kshs.500,000/-.
27. I note however that on 20/6/2024, before the balance was only Kshs.19,285/-, the account was debited with the amount of Kshs.32,606,356.25. However, the Interested Party failed to transfer the amount of Kshs.23,000,00 to the joint account as directed by the court.
28. Although it was true that the account had insufficient funds during some periods, the statement of account shows that it did indeed have enough money for the transfer of funds as of 20/6/2024. The Interested Party had the opportunity to transfer the funds but failed to do so.
29. The 1st Defendant's allegation that the account was a loan account holds no water as the statement indicated that it was a current account.
30. Based on the foregoing observations, I find that the Interested Party willingly disobeyed the court order of 30/4/2024.
31. In the case of Dr. Samuel Mundati Gatabaki Vs. Muga Developers Limited & 3 Others, the court found the Plaintiffs to be guilty of contempt of court and in considering the sentence to mete out, the late Majanja J held:

“I therefore find and hold that the Plaintiffs knowingly and willfully disobeyed the Consent Order dated 21st December 2021. They are therefore guilty of contempt of court. Turning to the penalty, I am aware that ultimately the purpose of the contempt is to maintain the dignity of the court and its processes. However, the interest of the court and no doubt the Defendants is to ensure that court orders are obeyed and implemented. I will therefore give the Plaintiffs' an opportunity to purge their contempt by directing them not to interfere with the Defendants' access to suit property and it is only after the survey is completed that I will sentence them. The orders of injunction I will issue are merely to facilitate the implementation of the Consent.”

32. In this case, having found that the Interested Party was in contempt of the court order issued on 30/4/2024, I will give its chief executive officer an opportunity to appear before this court on March 3, 2025 and show cause why punishment should not be meted out on them for contempt of lawful court orders. Failure to appear on the stated date and time the court will be at liberty to mete an appropriate sentence upon the contemnors. It is so ordered.



DATED, SIGNED AND DELIVERED VIRTUALLY at NAIROBI this 17TH DAY OF JANUARY 2025.

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J.W.W. MONG'ARE

JUDGE

In the Presence of:-

1. Ms. Abok for Interested Party.
2. No appearance for the Plaintiff.
3. No appearance for the Respondent.
4. Amos -Court Assistant

