



REPUBLIC OF KENYA



Ronoh & 2 others v Consolidated Bank of Kenya Ltd; Kigen & 2 others (Interested Parties) (Civil Suit E017 of 2018) [2025] KEHC 495 (KLR) (17 January 2025) (Ruling)

Neutral citation: [2025] KEHC 495 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL SUIT E017 OF 2018
RN NYAKUNDI, J
JANUARY 17, 2025**

BETWEEN

MICHAEL KIMUTAI RONO **1ST PLAINTIFF**

ANNE JEROTICH RONO **2ND PLAINTIFF**

ROSE CHEPCHIRCHIR RONO **3RD PLAINTIFF**

AND

CONSOLIDATED BANK OF KENYA LTD **DEFENDANT**

AND

JOHN KIGEN **INTERESTED PARTY**

KIPLAGAT CHEBII **INTERESTED PARTY**

IRENE CHEBIENI **INTERESTED PARTY**

RULING

Representation:

M/s Wambua Kigamwa & Co. Advocates

M/s Cheptumo & Co. Advocates

1. Before me for determination is an application dated 6th December, 2024 expressed to be brought under the provisions of Section 5 of the [Judicature Act](#) and Section 5 of the [High Court \(Organization and Administration\) Act](#). The applicant seeks orders to wit: -
 - a. Spent.
 - b. That the Chief Executive Officer of the defendant be summoned to show cause as to why he/she ought to be cited for contempt of court over disobedience and non-compliance



with the judgment of this court delivered on the 31st July, 2024 by failing to discharge and deliver to the Plaintiffs the duly discharged original titles to the land parcels Karuna/Sosian Block 8 (USWO)/476, Eldoret Municipality Block 14/693 and Kitale Municipality/Block 15 (Koitogos)/322.

- c. That the Honorable court be pleased to find the Chief Executive Officer of the defendant guilty of contempt of court and proceeds to met out such sanctions and punishments as are appropriate in respect of the defiance of the judgment dated the 31st July, 2024.
 - d. That the Chief Executive Officer of the defendant be summoned to show cause why he/she ought not to be cited for contempt of court over disobedience of the order of this court made on the 15th of November, 2024 requiring: -
 - i. The release of the original titles for the properties Karuna/Sosian Block 8 (USWO)/476, Eldoret Municipality Block 14/693 and Kitale Municipality/Block 15 (Koitogos)/322 to the Plaintiffs within 14 days of the ruling.
 - ii. The defendant to execute and register the discharge or charge documents for the said properties within the same period.
 - e. That appropriate sanctions and punishments be meted out by the Honorable court upon the Chief Executive Officer of the defendant for the defiance of the orders made on the 15th November, 2024.
 - f. That the Honorable court be pleased to make an order for the Deputy Registrar of this court to execute on behalf of the defendant all requisite instruments required to discharge the land parcel known as Karuna/Sosian Block 8 (USWO)/476, Eldoret Municipality Block 14/693 and Kitale Municipality/Block 15 (Koitogos)/322 and the Land Registrar of the Respective County Land Registries in which the land parcels are registered do dispense with the requirement to tender the original title documents for registration purposes.
 - g. That the costs of this motion for contempt and the execution of the judgment and the order be sourced by the defendant.
2. The application is premised on 6 grounds together with an affidavit in support sworn by Michael Kimutai Ronoh. The applicant avers that:
- a. That the Honorable court in its judgment it decreed the defendant to discharge the Plaintiffs properties and return the original titles to them.
 - b. That the defendant despite knowledge of the decision having been delivered in the presence of its legal advisor and subsequently acknowledging it would comply has defied the judgment.
 - c. That the Honorable court has rendered a ruling requiring the defendant to register the discharge of charges of the Plaintiffs properties and return the original titles to them which it has also defied.
 - d. That the defendant's actions amount to undermining the dignity and authority of the court to administer justice.
 - e. That the defiance of the judgment and order are occasioning extreme prejudice to the Plaintiffs as decree holders who are entitled to enjoy the fruits of their judgment.



- f. That the court is vested with jurisdiction to execute its judgment by the ordering of its officers to execute the requisite instructions on behalf of the defendant to facilitate compliance with the judgment.
3. At the time of drafting this decision, despite proper service, the defendant has not filed any response to the application. Although the application stands unopposed, the Court will nevertheless proceed to evaluate its merits and render a determination based on the substantive issues presented.

Analysis and determination

4. The instant application arises from the Defendant's alleged failure to comply with two distinct court orders: first, the judgment delivered on 31st July 2024 which directed the Defendant to discharge and deliver to the Plaintiffs the original titles for three parcels of land - Karuna/Sosian Block 8 (USWO)/476, Eldoret Municipality Block 14/693 and Kitale Municipality/block 15 (Koitogos)/322; and second, the subsequent order dated 15th November 2024 which specifically required compliance within 14 days. The Plaintiffs contend that despite these clear judicial directives and the Defendant's presence through its legal advisor during the delivery of judgment, the Defendant has neither executed the discharge instruments nor released the original title documents, thereby undermining the court's authority and frustrating the Plaintiffs' ability to enjoy the fruits of their judgment. The application, though properly served, remains unopposed by the Defendant.
5. The authority of superior courts to impose sanctions for contempt extends beyond merely enforcing compliance with court orders. This jurisdiction serves a broader and more fundamental purpose: safeguarding the integrity and effectiveness of the judicial system itself.
6. Lord Diplock in the case of *The AG v Times Newspaper Limited* (1973) 3 ALL ER 54 had this to say on the same subject matter before this court.

“In any civilized society it is the function of the government to maintain courts of law to which its citizens can have access for the impartial decision of disputes as to their legal rights and obligation towards one another individually and towards the state as representing the society as a whole. The provision of such a system for the administration of justice by courts of law and the maintenance of public confidence in it are essential if citizens are to live together in peaceful association with one another. Contempt of court is a generic term descriptive of conduct in relation to particular proceedings in a court of law which tends to undermine that system or to inhibit citizens from availing themselves of it for the settlement of their disputes. Contempt of court may thus take many forms.”

7. As a general rule in our legal system no order of the court requiring a person to do or abstain from doing any act may be enforced unless a copy of the order has been served personally on the person required to do or abstain from the act in question. In the case at bar, the law requires that the orders so made against the defendant bank. The contempt proceedings may only be enforced against the managing director or the Chief Executive Officer of the bank and evidence must be tendered in court that the one so accountable in implementing the decree of the court has been served personally with the copy of the order. A perusal of the affidavit evidence by the applicant provides no proof that the order was served on the office of the Chief Executive Officer of the defendant bank. The position of the law regarding service of documents of a company or a legal entity demands or requires such service to be effected on an officer of the company intended to be served with the order and against whom committal proceedings for contempt of court will be instituted. It is impossible to commence contempt proceedings against the Chief Executive Officer of the defendant bank as prayed by the applicant without cogent evidence



of such service having been effected. It is worth noting that the applicant is referring to a holder of an office without possible identification of the person and human body being the holder of that office. The so intended proceedings do not comply with the provisions of the Civil Procedure Act and the Rules for this court to exercise discretion to grant the orders.

8. The jurisdiction to punish for contempt, being a power that can result in the curtailment of personal liberty, must be exercised with utmost caution and circumspection. This necessitates strict adherence to procedural requirements, particularly regarding service and identification of the alleged contemnor. The gravity of contempt proceedings demands that no procedural irregularity be overlooked.
9. A foundational requirement in contempt proceedings is that the alleged contemnor must be properly identified and personally served with the order they are accused of breaching. Where the contempt is alleged against a corporate officer, the application must specifically name the individual sought to be cited for contempt. This requirement ensures that the person against whom sanctions are sought has proper notice and an opportunity to comply or explain their non-compliance.
10. In examining the present application, a significant procedural deficiency becomes apparent. While the applicants have demonstrated the existence of the orders in question, they have not shown that these orders were properly extracted and personally served upon the Chief Executive Officer of the Defendant. More crucially, the application seeks to cite the office holder for contempt without specifically identifying the particular individual alleged to be in contempt.
11. The requirement for personal service in contempt proceedings serves multiple purposes. It ensures that the alleged contemnor has actual notice of both the order and the consequences of non-compliance. It also establishes a clear record of when and to whom the order was communicated, thereby enabling the court to assess whether any subsequent non-compliance was indeed willful.
12. While the Court acknowledges the Plaintiffs' legitimate frustration with the non-compliance of its orders, the procedural safeguards in contempt proceedings cannot be bypassed. These requirements are not mere technicalities but essential protections that ensure fairness and due process. The application as presently framed falls short of meeting these fundamental requirements.
13. However, this determination does not leave the Plaintiffs without remedy. The proper course is to allow them to extract the relevant orders, ensure they are properly served upon the specifically named Chief Executive Officer of the Defendant, and return to court if non-compliance persists.
14. Accordingly, I make the following orders:
 - a. The Plaintiffs shall extract the relevant orders and ensure personal service upon the Chief Executive Officer of the Defendant, specifically naming the individual sought to be cited for contempt.
 - b. Upon effecting such service, the Plaintiffs shall be at liberty to pursue the contempt proceedings afresh if non-compliance continues.
 - c. Each party shall bear their own costs.
15. It is so ordered.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 17TH DAY OF JANUARY 2025

In the Presence of

Mr. Mogambi for the Plaintiff

Siboe for the Respondent



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R. NYAKUNDI

JUDGE

