



Mbogo & another v Registrar of Companies; Njoka (Interested Party) (Miscellaneous Civil Application E820 of 2020) [2025] KEHC 1530 (KLR) (Commercial and Tax) (13 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1530 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E820 OF 2020
PM MULWA, J
FEBRUARY 13, 2025**

BETWEEN

MARGARET RACHEL MBOGO 1ST APPLICANT

WALTER NYAMU KARIUKI 2ND APPLICANT

AND

THE REGISTRAR OF COMPANIES RESPONDENT

AND

ROBERT MUTHARA NJOKA INTERESTED PARTY

RULING

1. The applicant's Notice of Motion application dated 3rd July 2023 is expressed to be brought under Sections 2, 3 and 5 of the *Judicature Act*, Sections 1A, 1B and 3A of the *Civil Procedure Act* and Order 51 Rules 1 and 3 of the Civil Procedure Rules. The main prayers sought are as follows:
 - a. The 1st Applicant be cited for contempt of court for disregarding the ruling made on September 23, 2021, by Honourable Justice D.S. Majanja.
 - b. The 1st Applicant be committed to civil jail for a period not exceeding 2 years.
 - c. The 1st Applicant be compelled to comply with the Court's ruling.
2. The interested party/applicant also asked to be awarded costs.
3. The application is supported by an affidavit from Robert Njoka Muthara, who states that the 1st Respondent, along with others, engaged in fraudulent and illegal activities that altered the



shareholding of New Embu Uhuru Garage Limited and accessed funds in various accounts belonging to the company at National Bank of Kenya. Since all the founding members and shareholders of the company are deceased, the Court had previously ruled that the administration of the estates of the deceased must be completed before their rights as shareholders can be exercised. Despite being fully aware of this Court order, the 1st Applicant has willfully failed to comply with the ruling.

4. In response, Margaret Rachel Mbogo filed a Replying Affidavit sworn on 29th September 2023. She argues that the application is misconceived, misguided, and should be dismissed. She states that the Court's ruling on 23rd September 2021 dismissed the application dated 28th June 2020, and as such, it cannot result in any positive order. Therefore, the issue of contempt does not arise from the ruling. Additionally, she denies the allegations against her, stating that there is no evidence to support the claims.
5. Only the Interested Party filed written submissions, which I have thoroughly considered alongside the application grounds and the affidavits. The main issue for consideration is whether the application is merited.
6. It is well established that obedience to court orders is a fundamental principle in our legal system. Courts have consistently upheld that compliance with court orders is mandatory. Disobeying court orders can lead to serious consequences, including contempt of court proceedings. A party to litigation must obey an order of the court, irrespective of whether the order is considered by the party to be right or wrong (Court of Appeal in *Hadkinson v Hadkinson* [1952] 2 All ER 567).
7. The Interested Party alleges that the 1st Respondent is in contempt of a court order issued on 23rd September 2021, which specifically prohibited any action concerning the company until the administration of the estates of the deceased founders and shareholders was fully completed. The Interested Party has provided evidence in the form of a CR12 document dated 11th May 2023, showing that the 1st Applicant and one Arthur Munene Mbogo were added as joint shareholders of New Embu Uhuru Garage, purportedly representing the estate of the late Gershon John Mbogoh.
8. However, it is noteworthy that the Interested Party has also submitted that these changes were subsequently reversed and expunged by the Registrar of Companies, as evidenced by the letter dated 17th May 2023. This raises the question of whether, at the time of the alterations to the shareholding register, there was any deliberate attempt to bypass or disregard the court's directive.
9. The court acknowledges that the 1st Applicant did take some steps to comply with the court's order. Specifically, the 1st Applicant submitted a grant of representation to the Registrar of Companies, suggesting an effort, albeit incomplete, to ensure that any changes to the shareholding register were properly grounded in the administration of the deceased's estate. This action was indicative of good faith but fell short of fully satisfying the court's directive, which required the complete administration of the estates of all deceased shareholders before any actions could be taken on behalf of the company.
10. Contempt of court is a grave charge and demands a deliberate and intentional disregard of a court order. It is not sufficient for a party merely to have acted in breach of a court order, the breach must be shown to be intentional, deliberate, and sustained. The Interested Party is required to provide a higher degree of proof to demonstrate the 1st Applicant's willful disobedience. This burden of proof is more than a mere balance of probabilities; it requires clear and convincing evidence that the 1st Applicant acted with the intent to disregard the court's order.
11. In the present case, the changes to the shareholding register were reversed by the Registrar of Companies before the application for contempt was filed. There is no evidence to suggest that, at the time of the alterations, the 1st Applicant intentionally sought to bypass the court's directive. Given the



reversal, it is apparent that the breach was not sustained, and the 1st Applicant's actions were rectified. As such, the Interested Party has failed to meet the burden of proof required to demonstrate contempt. The reversal of the changes negates any inference of deliberate disregard for the court's authority.

12. In light of the facts and the legal standard for contempt, it is my view that the 1st Applicant should not be held in contempt of court. Although the actions taken were premature and in breach of the court order, they were corrected by the Registrar's reversal of the changes. There is no evidence that the 1st Applicant acted with the deliberate intent to disregard the court's authority. As such, the charge of contempt of court cannot be sustained.
13. Consequently, I find that the Notice of Motion dated 3rd July 2023 is without merit and is dismissed. Each party to bear their own costs.

RULING DELIVERED, DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF FEBRUARY 2025.

P.M. MULWA

JUDGE

In the presence of:

N/A for Applicants

N/A for Respondent

Mr. Gaitho for Interested Party/Applicant

Court Assistant: Carlos

