



REPUBLIC OF KENYA



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**Mahammadali v Kumar & 3 others (Commercial Case E894 of 2021)
[2025] KEHC 3804 (KLR) (Commercial and Tax) (14 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3804 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E894 OF 2021
MN MWANGI, J
MARCH 14, 2025**

BETWEEN

PUNJANI RIYAZ MAHAMMADALI PLAINTIFF

AND

SHAILESH RAI KUMAR 1ST DEFENDANT

RANJEETA RAI PANDEY 2ND DEFENDANT

**ANNE NELIMA OTUNGA T/A BELLMAC CONSULTING
LLP 3RD DEFENDANT**

HERITAGE FLOWERS LIMITED 4TH DEFENDANT

RULING

1. The application before me is dated 11th October, 2023. It is anchored on the provisions of Articles 1, 2(a) and 159(1) of *the Constitution* of Kenya, 2010, Section 5 of the *Judicature Act*, Rule 81.4 of the Civil Procedure (Amendment Act No. 2) Rules, 2012 (of England) and all enabling provisions of the law. The 1st defendant/applicant seeks the following orders –
 1. Spent;
 2. That pending the hearing and determination of the application herein, the Honourable Court be pleased to issue a mandatory order compelling the plaintiff/contemnor to sign off the applicant's salary cheque for the month of September 2023 with three (3) days of service of this order;
 3. That in non-compliance with prayer 2 above and in light of the egregious disobedience of Court orders by the plaintiff/contemnor and to avoid the business activities of the company



grinding to a halt or unlawful delays in payment of salaries, taxes, statutory dues and other ordinary and lawful company expenses or expenditures, the Court allows the plaintiff/contemnor to be substituted as a signatory in all banks where the nominal defendant holds an account by another shareholder/director being Ranjeeta Rai Pandey, the 2nd defendant herein, pending the hearing and determination of this application and the said banks be at liberty and hereby authorized to accept such changed mandate.

4. Spent;
 5. That pending the interpartes hearing and determination of the instant application, this Honourable Court be and is hereby pleased to issue summons for the personal attendance of Punjani Riyaz Mahammadali, the plaintiff/contemnor on a date and time to be determined by this Honourable Court for hearing of the instant application and to show cause why he should not be cited for contempt of the Honourable Court's Order issued on 8th November 2021;
 6. That in default of attendance upon issuance of summons and pending the hearing and determination of the instant application the Honourable Court be and is hereby pleased to issue appropriate orders to secure his attendance including issuing warrants of arrest, to be enforced through the National Police Service Officer commanding Parklands Police Station;
 7. That in non-compliance with prayer 2 above and in light of his egregious disobedience of Court Orders by the plaintiff/contemnor (sic) and to avoid the business activities of the company grinding to a halt or unlawful delays in payment of salaries, taxes, statutory dues and other ordinary and lawful company expenses or expenditures, the Court allows the plaintiff/contemnor to be substituted as signatory in all the banks where the nominal defendant holds an account by another shareholder/director being Ranjeeta Rai Pandey, the 2nd defendant herein, pending the hearing and determination of the suit and the said banks be at liberty and hereby authorized to accept such changed mandate;
 8. That this Honourable Court be and is hereby pleased to cite the Punjani Riyaz Mahammadali (sic), the plaintiff/contemnor for contempt, and commit him to jail for a period not exceeding six months, for contempt of this Honorable Court's Order issued on 8th November 2021;
 9. The Honourable Court be pleased to issue any further orders and/or direction as may be necessary to give effect to the orders sought herein and that it deems fit in the interest of justice; and
 10. That the costs of this application be provided for.
2. The application is supported an affidavit sworn on 11th October 2023 by the applicant, Mr. Shailesh Kumar Rai, the Managing Director of the nominal defendant. The applicant deposed that the plaintiff herein filed an application contemporaneously with a suit dated 2nd November 2021 seeking orders interalia, for a temporary injunction restraining the 1st and 2nd defendants from changing and/or continuing with any change in the bank mandate at the Bank of India and Victoria Commercial Bank Limited and/or any other Bank where the nominal defendant holds an account or operating such accounts without the written consent of the plaintiff.
 3. The applicant stated that the said application was fixed for mention on 8th November 2021 before Hon. Justice Chacha Mwita where the application dated 2nd November 2021 was compromised and an order dated 8th November 2021 was issued in the terms that there would be no change to the bank mandate, that is, signatories to the accounts of the nominal defendant until determination of the suit.



4. Further an order was issued to the effect that the plaintiff shall sign all the cheques in respect of monies necessary for the proper management of the company including statutory deductions and salaries.
5. The applicant averred that the plaintiff/contemnor was in full knowledge of the proceedings before this Court and the terms of the order which was issued in the presence of the plaintiff's Counsel and served upon him on various dates and more recently on 2nd October 2023.
6. The applicant contended that despite due notice and knowledge of the Order, the plaintiff/contemnor has in blatant violation, disobedience and defiance of the said Court Order dated 8th November 2021 willfully failed, refused and/or neglected to sign off various cheques listed in the affidavit.
7. The applicant further contended that the plaintiff/contemnor's conduct is in willful and deliberate disregard, disobedience and defiance of the Hon. Court's Order bringing the authority of the Honourable Court and the rule of law into ridicule and disrepute, threatening the very administration of justice.
8. He stated that it is not just that he is gravely prejudiced by the intransigence and disregard of valid Court Orders on the contemnors but also the very rule of law.
9. He averred that the plaintiff/contemnor's conduct is calculated to scandalize the proceedings before this Honourable Court and is indeed a most scurrilous, venomous and an unjustified attack upon this Court; without merit exposing the Hon. Court and the very foundations of administration of justice to ridicule, odium, disrepute and contempt and should be condemned by this Court in the strongest terms possible.
10. The applicant contended that the brazen conduct of the contemnor threatens the very foundations of the administration of justice and rule of law and paints the country's adjudicative processes as weak, powerless and ineffective. He stated that such conduct cannot be countenanced or ignored.
11. He urged this Court to move speedily to affirm its statutory authority and uphold its integrity and the sanctity of its processes to ensure that its decisions are not rendered in vain by allowing the orders being sought.
12. The plaintiff herein, Mr. Punjani Riyaz Mahammadali swore an affidavit on 17th January 2024 in response to the application to oppose the same. He stated that he is the majority shareholder of the nominal defendant with a shareholding of 50%, that the applicant herein has 25% shareholding, with the 2nd defendant having a shareholding of 25%.
13. The plaintiff stated that he and the applicant herein are Directors of the nominal defendant. He contended that the application herein is replete with falsehoods and is intended to cover illegalities and fraudulent activities being conducted by the defendants.
14. The plaintiff averred that the applicant illegally and irregularly appointed his wife, the 2nd defendant, as a Director and irregularly appointed the 3rd defendant as the Company Secretary and caused the unlawful appointment to be registered in the Company's Register as per the CR12 dated 20th August 2021. The plaintiff stated that he challenged the appointment of the 2nd defendant who is the wife of the 1st defendant as a Director, in an application dated 2nd November 2021, which led to issuance of the orders made on 8th November 2021.
15. The plaintiff pointed out that the Registrar of Companies noted the irregularities after being informed by the plaintiff of the same, which irregularities were rectified by the Registrar of the Companies who



- expunged the applications for appointment of the 2nd defendant as a Director and the 3rd defendant as the Company Secretary of the nominal defendant.
16. The plaintiff deposed that since 12th November 2021, the Register at the Companies' Registry only has 2 Directors being himself and the applicant.
 17. The plaintiff contended that despite the said changes the 2nd defendant continues to masquerade as a Director of the nominal defendant, appears in Directors' meetings and signs resolutions, which actions are unlawful and null and void.
 18. The plaintiff also contended that the 3rd defendant also continues to masquerade as a Company Secretary despite the knowledge that her appointment was expunged.
 19. He deposed that the current application alleges that he is in contempt of Court for not having signed salary cheques for the month of September 2023. He further deposed that the orders of 8th November 2021 provided expressly that the plaintiff shall sign cheques in respect for the proper management of the Company including statutory deductions and salaries. He stated that it is a good corporate governance principle to ensure their transparency and accountability in the reasons for payment.
 20. He contended that true to his reasonable apprehension that the 1st, 2nd and the 3rd defendants are engaging in unlawful and irregular activities, the 1st and 2nd defendants were charged with several counts in Milimani Criminal Case No. E604 of 2023 (Republic v Shailesh Kumar Rai & 4 others) related to stealing by Directors, money laundering and for forgery relating to Rosalia Bloom Limited.
 21. The plaintiff stated that the said Company was registered on 14th April 2021 and was being operated by the 1st and 2nd defendants in a manner meant to defeat the business operations of the nominal defendant.
 22. He further stated that the 1st and 2nd defendants are also Directors and Shareholders of a Company known as Meridian Flowers Limited which was registered on 24th February 2022 after the case herein was filed. He averred that the said Company trades in flowers and was meant to be used as a vehicle for competing with the nominal defendant herein, an act which is contrary to conflict of interest principles governing Directors.
 23. The plaintiff contended that because of the criminal case the 1st and 2nd defendants are facing of stealing and money laundering in Milimani Criminal Case No. 604 of 2023 - Republic v Shailesh Kumar Rai & 4 others, the 1st defendant cannot be said to be properly managing the nominal defendant. The plaintiff contended that the defendants are in the process of defrauding the nominal defendant and if not stopped, they are likely to end up with a shell company before the suit is finally heard and determined.
 24. He stated that it cannot therefore be said that he has willingly refused to obey Court Orders to warrant being cited for contempt. He further stated that he had taken every reasonable step to ensure that the nominal defendant is not defrauded hence the institution of this suit.
 25. Mr. Riyaz averred that the application is purposely intended for the defendants to continue operating illegally in the office and to defraud the nominal defendant to closure and dilution of shareholding.
 26. He stated that vide a letter dated 4th October 2023 through his Advocates on record, he requested to be supplied with details of when the 1st defendant attends to the farm and the roles that entitled him to hefty salaries and benefits; a detailed work plan for the business considering that the 1st defendant was busy working for his competing business under Rosalia Bloom Limited and Meridian Company; access to records of expenditure and revenue by the company, an organogram of all employed at the



farm, their job descriptions and salaries; and since there is currently no Farm Manager, the 1st defendant was to provide details of who is attending to the daily management of this very delicate business.

27. Mr. Riyaz stated that no work plans were provided, and that all that the 1st and 2nd defendants have been doing is to threaten contempt proceedings while they cannot give substantive justification as to the relevant documents and details as requested. He added that the foregoing means that there has been no proper management of the company.
28. In a further affidavit sworn on 22nd March 2024, Mr. Shailesh Rai Kumar, the applicant herein, averred that there exists in law an unqualified obligation of every person in respect of whom an order is made by a competent jurisdiction (sic) to obey it unless and until it is discharged. He further averred that the plaintiff in his replying affidavit has merely proffered his view and opinion over his non-compliance with the orders of this Court given on 8th November 2021.
29. He averred that the said order required the plaintiff under Order 4(ii) thereof to sign all cheques in respect of monies necessary for the proper management of the nominal defendant, including statutory deductions and salaries, which order was issued in the presence of the plaintiff's Counsel and the plaintiff has at all times been aware of that order.
30. Mr. Rai opined that the said order was issued by the Court which was minded of the then uncontroverted position that he and the plaintiff were the sole signatories of the nominal defendant's accounts held with the Bank of India, from which the operational expenses of the nominal defendant are drawn.
31. He deposed that the disputations propounded by the plaintiff in regard to the refusal to sign cheques presented to him on account of the alleged shareholder dispute were matters that were alive to the Court as at the time the unambiguous orders of 8th November 2021 were given. He contended that there can be no lawful justification for the plaintiff's non-compliance with the orders of the Court whilst asserting matters that are alive and pending of adjudication before this Court.
32. He stated that he was aware that since 8th November 2021, when the orders were issued, the plaintiff had made no efforts to have the orders varied, discharged or set aside if he felt aggrieved by their prevalence. He further stated that the cheques he produced under paragraph 6 of his supporting affidavit dated 11th October 2023 are both in respect of outstanding services duly provided to the nominal defendant and authorized by the nominal defendant's Board of Directors and for payment of his salary.
33. Mr. Rai deposed that his Counsel on record had advised him that the plaintiff had previously executed his salary cheques in the period during the subsistence of the orders of 8th November 2021 and cannot now arbitrarily purport to withhold his salary on the grounds of making unsubstantiated remarks on preventing the defrauding of the nominal defendant. He claimed that the plaintiff was merely approbating and reprobating.
34. He contended that the plaintiff's response actually confirms his willful non-compliance with the non-equivocal orders of the Court and the proffered reasons cannot stand in the absence of the discharge of the prevailing orders of the Court.
35. The instant application was canvassed by way of written submissions. The 1st defendant's written submissions dated 22nd March 2024 were filed by the law firm of CM Advocates LLP. The plaintiff's submissions dated 8th April 2024 were filed by the law firm of Kimani & Michuki Advocates.
36. Mr. Githu, learned Counsel for the 1st defendant gave a brief background leading to the orders made on 8th November 2021 by Hon. Judge Chacha Mwita which give rise to the present application.



37. He submitted that the consent orders given on 8th November 2021 and issued on 10th November 2021 have not been varied, discharged or set aside. He referred to Order 4(ii) of the said Orders, which directed the plaintiff to sign cheques in respect of monies necessary for the proper management of the Company including statutory deductions and salaries.
38. Counsel referenced the case of *Carriers and Traders Fast Africa Limited v Clarkson Insurance Brokers & another; Mshweshwe (interested party) Civil Suit 307 of 2014) 2023 KEHC 17992 (KLR)*, which cited the definition of contempt as per the Black's Law Dictionary (Ninth Edition).
39. He added that Section 5 of the *Judicature Act* confers Superior Courts with powers to punish for contempt. He stated that the rationale for punishing for contempt is to uphold the dignity and authority of the Court, ensure compliance with directions of the Court, foster the observance and respect of due process of law, and preserve an effective and impartial system of justice whilst maintaining public confidence in the administration of justice.
40. Counsel cited the case of *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another [2005] KLR 828* cited with approval by the Court in the case of *Sheila Cassat Issenberg & another v Antony Machatha Kinyanjui [2021] eKLR*.
41. In citing the case of *Alfred Mutua v Boniface Mwangi [2023] KEHC* at paragraph 37 thereof, Mr. Githu set out the four elements that must be proved in contempt cases, on a degree that is higher than in civil cases.
42. Counsel submitted that these four elements prevail and are not disputed by the plaintiff. He stated that paragraph 5 and annexure PRM - 2 of the plaintiff's replying affidavit reveals that he was aware of the clear and unambiguous terms of the order issued in the presence of his Counsel, and that knowledge of the said order is not disputed anywhere in the plaintiff's replying affidavit.
43. Counsel invited this Court to find that despite knowledge of the terms of the order issued in the presence of his Counsel, the plaintiff declined to sign the salary cheques in respect of the payment of the monies incurred by the nominal defendant stated for payment of the Company's suppliers.
44. Mr. Githu posited that there exists no doubt as to the plaintiff's willful refusal to comply with the Orders as evinced by his averments at paragraph 14 of his replying affidavit. Counsel further posited that the plaintiff's contestations as to the lack of valid Board appointments, regarding the cheques payable to TFC Consultants Ltd engaged by the nominal defendant to conduct a valuation of the Company, Kakemu Associates the nominal defendant's Auditors, Bellmac Consulting Limited the Company Secretaries, leave pay and salary in respect of the applicant's managerial duties are all issues that are pending determination before this Court.
45. He urged this Court to find that the Court Order given on 8th November 2021 imposed a mandatory duty upon the plaintiff to execute cheques presented to him in respect of the monies necessary for the management of the nominal defendant including statutory deductions and salaries whilst excluding the idea of discretion.
46. Counsel asserted that the use of the word "shall" is key in ascertaining whether the duty and obligation imposed upon the plaintiff was mandatory or discretionary. He cited the case of *Republic v Council of Legal Education & another exparte Sabiha Kassamia & another [2018] eKLR*, where Mativo J., (as he then was) cited with approval the definition of the word "shall" as per the Black's Law Dictionary.
47. Mr. Githu submitted that the Court's issuance of the orders imposing a mandatory obligation upon the plaintiff to sign cheques presented was premised on the Court's reluctance to interfere with a



- shareholder dispute and its acknowledgement that the absence of the order would cripple the nominal defendant's operations.
48. Counsel contended that the rationale given for non-compliance being that the plaintiff is making efforts to prevent the defrauding of the nominal defendant does not meet the legal threshold accorded in law in purging an act of contempt.
 49. He submitted that if the plaintiff harboured a legitimate apprehension that the nominal defendant was being defrauded as he alleges, then nothing would have been simpler than to move the Court for variation or otherwise discharge of the orders of this Court of 8th November 2021, which was not done.
 50. Mr. Githu relied on the Court of Appeal case of *Woburn Estate Limited v Margaret Bashforth* [2016] eKLR, cited with approval in the said Court's earlier decision in *Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others* (Civil Application No. 33 of 2013), to the effect that a party directed by an order of the court to do or to refrain from doing any act must comply with the direction until it is discharged, irrespective of that party's view or opinion over the Order.
 51. He submitted that the Court in the *Woburn Estate* case restated that contempt of Court proceedings are not intended to protect the personal dignity of the individual Judicial Officer, or the private rights of any litigant, but are meant to protect the fundamental supremacy of the law and the rule of law.
 52. Mr. Githu urged this Court to allow the 1st defendant's application and deal firmly with the plaintiff/contemnor for disregarding Court Orders made on 8th November 2021.
 53. Mr. Gakunga, learned Counsel for the plaintiff submitted that in the orders of 8th November 2021, the Court expressly ordered the plaintiff to sign cheques in respect of monies necessary for proper management of the company.
 54. He stated that at all material times, the plaintiff did not in any manner disregard Court orders, and his actions or inactions were in strict compliance with the said Orders.
 55. He submitted that the Black's Law Dictionary defines the term "proper" as "that which is fit, suitable, adapted and correct". He further submitted that proper management would therefore be that which is fit and correct, which essentially means that in order for a cheque to be signed, it had to be for a fit and correct purpose.
 56. Mr. Gakunga contended that it was not the intention of the Court that the plaintiff was to sign all cheques as presented to him, and that the Court knew that such an open Order would be abused because it would ideally mean that the plaintiff would be mandatorily obligated to sign all cheques.
 57. He further contended that the Court limited the signing by inserting the word "proper". He stated that whereas what is "proper management" is subjective, they would demonstrate to this Court that there was no willful disobedience of the Court Order as alleged. He stated that the plaintiff is the only reason that the nominal defendant is not on its knees either through its liquidation or forced closure.
 58. Mr. Gakunga urged this Court to consider three questions as to whether the Court can be called upon to cite a party for contempt if what was to be done was unlawful and intended to further an illegality, what the measure of "proper management" is, and if the 1st defendant's Counsel is the party to determine what "proper management" is.
 59. The plaintiff's Counsel stated that an explanation has been provided by the plaintiff in paragraph 14 of his affidavit as to the contents of each cheque. He submitted that in order to justify that the cheques issued were valid and necessary for "proper management" of the nominal defendant, all that was required from the 1st defendant were minutes of validly constituted meetings where the said



parties were contracted, and duly signed resolutions appointing the Valuers, Auditors and other service providers to provide their services to the nominal defendant.

60. He further submitted that the major consequence of allowing a Company to run contrary to agreed resolutions is that the impugned Director will incur liabilities that will be visited on all the shareholders, and since the plaintiff holds 50% shares and the 1st & 2nd defendants hold 25% each, if losses and liabilities were to be incurred, the plaintiff would be the biggest loser.
61. Mr. Gakunga cited the case of Samuel M.N. Mweru & others v National Land Commission & 2 others [2020] eKLR, to illustrate the test for when disobedience of a Court Order is considered to constitute contempt, and that the breach has to be deliberate and malafides, which is not the case herein.
62. The plaintiff's Counsel stated that the plaintiff has never willingly refused to obey any Court Orders to warrant being cited for contempt, and that he has taken every step to ensure that the nominal defendant is not defrauded hence the institution of this suit.
63. Mr. Gakunga cited the case of Mukora and 5 others v Ndiho & 2 others [2023] KEELC 16322 (KLR), where the Court held that the elements of contempt must be proved above the probabilities as it involves the curtailment of a person's freedom or imposing a fine on the person, which means that the Court must be satisfied that the elements have been proved.
64. Counsel also relied on the case of Sheila Cassatt Isenberg & another v Antony Machatha Kinyanjui (supra), where the Court extensively discussed the issue of the burden and standard of proof for contempt of Court.

Analysis And Determination

65. I have considered the instant application, the supporting and further affidavits filed by the 1st defendant/applicant and the replying affidavit by the plaintiff. I have also read the submissions filed in support of, and in opposition of the said application. The issue for determination is if the applicant has met the threshold of establishing for contempt of Court.
66. On 8th November 2021 the parties' Advocates attended Court before Hon. Justice Chacha Mwita for directions on an application dated 2nd November 2021. The said application was partly compromised in the following terms-
 - “(1) there should be no changes to the bank mandate that is signatories to the accounts of the nominal defendant until the determination of this suit.
 2. the plaintiff shall sign cheques in respect of monies necessary “ for the proper management” of the company including statutory deductions and salaries” (Emphasis added).
67. The 1st defendant's contention is that the plaintiff is in willful disobedience of the consent Order because he has failed to sign 15 cheques as outlined in the application for contempt of Court dated 11th October 2023 and his supporting affidavit. He attached to the said affidavit a copy of the salary transfer letter from Heritage Flowers Limited (nominal defendant) to the Bank Manager, Bank of India for the month of June 2023, July 2023, August 2023, and for September 2023. He also annexed Cheque No. 001751 for Kshs.1,250,371.00, the nominal defendant's senior staff payroll for August 2023, and a payment voucher for September 2023, a letter dated 29th November 2021 from the plaintiff/contemnor and copies of various unexecuted cheques and payment vouchers.



68. A perusal of the said annexures reveals that the plaintiff herein signed the salary transfer letters authorizing transfer of salaries to the 1st defendant and other persons on 22nd June 2023, 27th July 2023 and 26th August 2023. In the said three (3) letters, the 1st defendant herein signed off as the Managing Director and the plaintiff as a Director of the nominal defendant. When the salary transfer letter dated 28th September 2023 was presented to the plaintiff, he did not execute it and the cheque for the sum of Kshs.1,250,371.00 meant for salaries for four (4) of the nominal defendant’s employees, with the bulk of the payment in the sum of Kshs.999,999.00 meant for the 1st defendant.
69. The plaintiff’s explanation for the non-execution of the said letter is based on the allegation that he has reasonable apprehension that the 1st, 2nd and 3rd defendants are engaging in unlawful and irregular activities having been charged with 9 counts in Milimani Criminal Case No. E064 of 2023 - Republic v Shailesh Kumar Rai & 4 others related to stealing by Directors, money laundering and forgery.
70. The plaintiff tries to justify the non-execution of the said documents ostensibly on the basis of non-response of his letter dated 4th October 2023 requesting for certain information from the 1st defendant, as per his annexure PRM8, but he received no details in response to the said letter.
71. In the said letter in the paragraph below the one which he demanded for particulars of certain aspects of the 1st defendant’s work, the plaintiff’s Advocate addressed the 1st defendant as follows –
- “knowing fully well that you have set up competing businesses and are pillaging Heritage Flowers Limited for your personal benefit, and that of your competing businesses, you proceed to issue threats for institution of amongst others, contempt proceedings. You quote and bold -
- “The plaintiff shall sign cheques in respect of monies necessary for the proper management of the company including deductions and salaries”
- You do all this while fully aware that you are not “properly managing” the company and still possess a false confidence that the Court will be so lenient to an employee/Managing Director/shareholder who is engaging in criminal activities against the best interests of the company. Any misguided proceedings will be defended at the risk of costs and other consequences to be borne by you”.
72. Having analyzed the averments made by both the plaintiff and the 1st defendant, it is my finding that failure by the plaintiff to sign the salary transfer letter and the cheque dated 28th September 2023 was an act of bad faith.
73. If the plaintiff indeed wanted to get all the information he sought in the letter dated 4th October 2023 from the 1st defendant, nothing stopped him from convening a Special Board meeting to get full details of whether or not the 1st defendant had been executing his work as the Managing Director of the nominal defendant, and if not, the Board would have been at liberty to arrive at any resolution necessary for the running and management of the company if the 1st defendant was not running the company in its best interest. In addition, the 1st defendant must have been appointed as the Managing Director of the nominal defendant with Board approval and his salary agreed upon. Further, if such a meeting had been 1st convened, the plaintiff would have questioned the 1st defendant about being a Director in two other companies which are competing with the nominal defendant’s business.
74. Such issues should have been thrashed out at Board level and a decision taken thereon. The plaintiff herein seems to be having a hands off approach in the operations of the nominal defendant as in the said letter, he seems to be making assumptions that the 1st defendant operates without a work plan,



that the 1st defendant does not attend to his duties and earns a hefty salary without justification for the same, among the other allegations made therein. Being a Director of the nominal defendant, the plaintiff has the right to access documents and resolutions relating to the nominal defendant, including the work plan which would ordinarily be discussed at Board level and approved by the said Board.

75. When it comes to cases of civil contempt, four elements as laid down in the case of Alfred Mutua v Boniface Mwangi [2023] KEHE, must be demonstrated and proved. The Court at paragraph 37 of the said decision cited from the treatise Contempt in Modern New Zealand as follows –

“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.

76. It is not contested that the plaintiff was aware of the Orders made by the Court on 8th November 2021. From my reading of the said Orders, they were clear and unambiguous. If at all the plaintiff had found them ambiguous, he should have sought for interpretation of the said Orders from the Court. That was not done. Further, the said orders have not been varied or set aside.

77. From the response filed by the plaintiff, he explained that he did not sign the salary transfer letter and cheque for 28th September 2023 because it could not be justified that such payment was necessary for the “proper management” of the nominal defendant, due to the 1st defendant engaging in competing business.

78. It is my finding that the plaintiff acted in breach of the Court Order by refusing to sign the said salary transfer letter and cheque while being fully aware that the nominal defendant could not operate without workers, including the 1st defendant, yet the letter had not been removed as the Managing Director of the nominal defendant at that time. It was therefore in the best interest of the nominal defendant for the plaintiff to sign the said letter and cheque, so as to keep the nominal defendant as a going concern. It is therefore clear to me that the plaintiff’s refusal to sign the said documents was willful, deliberate and in disobedience of the Court Order of 8th November 2021.

79. I will however keep clear of the issue of non-payment to suppliers as that is an issue that should be dealt with by the plaintiff, the 1st and 2nd defendants at a properly convened Board meeting.

80. On the obligation to comply with Court Orders on a party who has knowledge of the same or who has been served with the same, in the case of Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR, the Court cited the decision by Romer L.J., in Hadkinson v Hadkinson [1952] ALL ER 567 as follows –

“It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that 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 an order believes it to be irregular or even void

81. The position held in the case of *Shimmers Plaza v National Bank of Kenya Limited* (supra) had been stated by Ibrahim J., (as he then was), in the case of *Econet Wireless Kenya Limited v Minister for Communication of Kenya & another* (supra), where he stated thus-

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of 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 a 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”.

82. It is common ground that contempt of Court proceedings are not intended to protect the personal dignity of an individual Judicial Officer but are meant to protect the dignity of the Court and to uphold the rule of law. The foregoing was stated by the Court in the case of *Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui* (supra), as follows-

“The reason why Courts punish for contempt is to uphold the dignity and authority of the court, ensure compliance with directions of the Court, observance and respect of due process of law, preserve an effective and impartial system of justice by courts. Without sanctions for contempt, there would be a serious threat to the rule of law and administration of justice. For a party to be cited for contempt, he must have violated and or disobeyed an order that was directed at him”.

83. In the end, it is my finding that a case of contempt of Court has been made out against the plaintiff herein, Punjani Riyaz Mahammadali to the required standard of above a balance of probabilities and below the threshold of beyond reasonable doubt, that is an intermediate standard, so to say.

84. I therefore find the plaintiff guilty of contempt of Court for contravening the Orders made on 8th November, 2021 by Hon. Justice Chacha Mwita. For the said reason the said plaintiff shall attend Court physically for mitigation and sentencing on a date that I shall appoint.

85. He shall purge the contempt by signing the salary transfer letter and cheque for payment of salaries as per the amount on the cheque dated 28th September 2023 upon receipt of this ruling, and in any event not later than 14 days thereafter.

86. I decline to grant the prayer for substitution of the plaintiff as a signatory of the bank accounts of the nominal defendant with Ms Ranjeeta Rai Pandey, the 2nd defendant herein, as such an action would run counter to the compromise reached on 8th November 2021, as recorded by Hon. Judge Chacha Mwita, to the effect that there would be no change in bank mandate that is signatories to the accounts of the nominal defendant until the determination of the suit.

87. In the end, the application dated 11th October 2023 is merited only in so far as the prayer for contempt of Court is concerned, and only to the extent specified in this ruling.

88. Having found the plaintiff guilty of contempt of Court, he shall bear the costs of the application herein dated 11th October 2023.



It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 14TH DAY OF MARCH, 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:

Mr. Githu for the 1st defendant/applicant

Mr. Gakunga for the plaintiff/respondent

Ms B. Wokabi – Court Assistant.

