



Gikomba Business Centre Limited v Pumwani Riyadhha Mosque Committee & another; Mwariri t/a KMberia and Partners Advocates LLP & another (Interested Parties) (Commercial Case E610 of 2024) [2025] KEHC 4799 (KLR) (Commercial and Tax) (8 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4799 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E610 OF 2024
JWW MONG'ARE, J
APRIL 8, 2025**

BETWEEN

GIKOMBA BUSINESS CENTRE LIMITED PLAINTIFF

AND

PUMWANI RIYADHA MOSQUE COMMITTEE 1ST DEFENDANT

PUMWANI RIYADHA MOSQUE REGISTERED TRUSTEES 2ND DEFENDANT

AND

**DR MERCY K MWARIRI T/A KMBERIA AND PARTNERS ADVOCATES
LLP INTERESTED PARTY**

**KENT KORI MUSONERA T/A KMBERIA AND PARTNERS ADVOCATES
LLP INTERESTED PARTY**

RULING

1. It is common ground that when the Plaintiff instituted this suit on 10th October 2024, they also sought various temporary orders and on 12th October 2024 the court (Mabeya J.,) allowed one of the prayers to wit; “that pending the hearing of the application, the Defendants were restrained from issuing adverse notices and pamphlets, disposing of, transferring, and/or whatsoever dealing in or interfering with the Plaintiff’s business opportunities in Land Parcel No. L.R. N.O. 209/19680 known as Gikomba Business Centre (“the suit property”).
2. The Plaintiff then filed another application where it sought various orders and the court (Mabeya J.,) on 16th October 2024 allowed some of the prayers sought as follows. “Pending the inter-partes hearing of the application, the Officer Commanding Station – Shauri Moyo Police Station and the



Kamukunji Sub-County Security Committee, headed by the District Commissioner were directed to facilitate compliance of the orders issued on 12th October 2024 including providing security in the Suit premises;”.

3. The Defendants and the Interested Parties were restrained from directly or indirectly, by any means whatsoever, dealing with, transferring, using or otherwise dissipating the funds deposited in the Bank Account: Equity Bank (k) Limited, Account Name: xxxxxx Client A/C, Account Number: 134xxxxx699, by the traders operating in the suit property with effect from 1st October 2024. The Defendants were also restrained from demanding payments from the traders in the suit property, and from receiving such payments, disposing of, transferring, and/or whatsoever dealing in or interfering with the Plaintiff’s business operations in the suit property.
4. By the Notice of Motion dated 8th November 2024, the Plaintiff have now filed the present application seeking that summons be issued to named members of the Defendants for being in contempt of the aforementioned orders of the court. The Plaintiff also seeks that the named members of the Defendant be committed to civil jail for a term of 6 months for their contempt and that the Officer Commanding Station – Shauri Moyo Police Station and the Kamukunji Sub-County Security Committee, headed by the District Commissioner, effect their arrest. That in lieu of the aforementioned orders, that the named members be fined at least Kshs.200,000.00/= each.
5. This application is supported by the grounds on its face and the supporting affidavit of the Plaintiff’s director, Bakai Maalim Kulmia, sworn on 8th November 2024. It is opposed by the Defendants through the replying affidavit and further replying affidavit of the 2nd Defendant’s Chairman Ahmed Sheikh Omar, sworn on 20th February 2025 and 6th March 2025 respectively. The parties canvassed the application by way of written submissions which are on record and which together with the pleadings I have considered and will make relevant references to in my analysis and determination below.

Analysis and Determination

6. The parties agree that the sole issue for the court’s determination is whether the defendants are guilty of contempt of the aforementioned orders issued by the court. Whereas I agree with the Defendants’ submission that the Plaintiff relies on the wrong provisions of the law to anchor its application, I find that this is not necessarily fatal to the application considering that the Defendants are aware that they are facing a contempt application and no prejudice has been+ occasioned by the wrong citations (see [Mohamed Aden Abdi v Abdi Nuru Omar, Ali Mohamed Haji T/A & Delta Haulage Services Ltd](#) [2007] KECA 25 (KLR)).
7. Further, whereas I agree that the [Contempt of Court Act](#) was declared unconstitutional by the court in [Kenya Human Rights Commission v Attorney General & another](#) [2018] KEHC 9656 (KLR), courts possess the inherent power to enforce compliance with their lawful orders through sanctions imposed through contempt of court. Section 5(1) of the [Judicature Act](#)(Chapter 8 of the Laws of Kenya) grants this court power to punish for contempt as follows:-

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.
8. It is trite that once a court issues an order, it binds all and sundry, the mighty and the lowly equally without exception. It is meant to be obeyed and not otherwise and that the ingredients required to be proved for a successful contempt prosecution were set out by the Court of Appeal in [Ochino & another v Okombo & 4 others](#) [1989] KECA 65 (KLR) where it cited its own decision in [Mwangi Mangondu v](#)



Nairobi City Council (Civil Appeal No. 95 of 1988) where it held that, “[T]he court will only punish as a contempt breach of injunction if satisfied that the terms of the injunction are clear and unambiguous, that the defendant has proper notice of the terms and that breach of the injunction has been proved beyond reasonable doubt.” The position on the applicable standard of proof has been affirmed by the Supreme Court which held as follows in *Githiga & 5 others v Kiru Tea Factory Company Ltd* [2023] KESC 41 (KLR):-

In enforcing compliance with lawful court orders, the procedures adopted by the court must be fair and reasonable in which full opportunity is given to an alleged contemnor to defend himself or herself. This is because contempt proceedings being quasi-criminal, require a higher standard of proof than in normal civil cases, and one can only be committed to civil jail or penalized on the basis of evidence that leaves no doubt as to the contemnor’s culpability.

9. The Plaintiff states that the Defendants have continued to direct the tenants and traders in the suit property to deposit sums to the impugned bank account and that they have been blocking the Plaintiff from resuming their business operations with the sole aim of unjustly benefitting by collecting rent and / or revenue from the tenants in the suit property. This, the Plaintiff contends is done in blatant disregard of the court’s orders and that the Defendants ought to be stopped in their tracks.
10. In response, the Defendants maintain that in spite of the court’s ruling of 5th December 2024, this court has no jurisdiction to determine this matter and that there is no affidavit of service exhibited by the Plaintiff to evidence service of the orders made on 16th October 2024 and 4th November 2024 upon the Defendant’s contemnors or the other alleged contemnors. Further, that the order of 16th October 2024 was made against the Interested Parties herein who are strangers to this suit as no request for joinder and no order for joinder was made enjoining them in this suit. The Defendants further state that the prayer restraining the Defendants from demanding rent from tenants and disposing of the property is incapable of compliance for reasons that the suit property is occupied by tenants with the permission of the 2nd Defendant as the registered owner and that it is entitled to rent from the property and that the 2nd Defendant has not sought to alienate or encumber the suit property. The Defendants further contend that the order of 16th October 2024 lapsed and was not extended on 4th November 2024 but rather, the court directed the maintenance of the status quo which was that the 2nd Defendant was the registered owner of the suit property, had let the same to tenants and was collecting rent. In sum, the Defendants aver that its members have not disobeyed the orders made on 16th October 2024 and 4th November 2024.
11. On the issue of jurisdiction, it is indeed common ground that the court has already pronounced itself in the affirmative as per the ruling of Mabeya J., on 5th December 2024. Whereas the Defendants do not agree with that conclusion and unless and until this decision is overturned by an appellate court, it remains the court’s position that it has jurisdiction to deal with this matter. On service of the court orders to the alleged contemnors, the orders of 16th October 2024 restraining the dealings in the impugned Equity Bank account were directed to the “...1st Respondent, the 2nd Respondent and the Interested Parties herein.” Whereas the Defendants state that these orders were never served upon them, the record indicates that they had knowledge of the orders of 16th October 2024 and 4th November 2024. This is evidenced by the fact that the Defendants filed an application on 17th October 2024 seeking to stay the orders issued on 12th October 2024 and 16th October 2024.
12. Our jurisprudence has shifted and developed that that knowledge of an order supersedes personal service. The rationale behind this change appears to be the need to protect the integrity and dignity of Court orders. To excuse a contemnor who has knowledge of a Court order simply because he has not



been personally served is to open up Court orders and process to deliberate, willful, contemptuous and cynical disobedience (See *Sang v Keter & 5 others* [2024] KEELC 14136 (KLR)). As the Defendants were clearly aware of the orders of the court as evidenced by their conduct in this matter and the presence of their advocates when the orders were being issued and extended from time to time, they now cannot feign lack of knowledge of the same by hiding behind the requirement of service of the orders. On whether the orders were served upon the Interested Parties who as they are “strangers” in this suit, I agree with the Plaintiff’s submission that the Defendants cannot purport to speak on their behalf. In any case, Order 8 Rule 1 of the *Civil Procedure Rules* provides that; “A party may, without the leave of court, amend any of his pleadings once at any time before the pleadings are closed.” As the Defendants are yet to file a defence, the Plaintiff can amend its pleadings and introduce the Interested Parties as parties in this suit without the leave of court.

13. On the contention that the orders are incapable of compliance, I note that the Defendants assert that they are the owners of the suit property and thus, they are entitled to collect rent, regardless of what the court says. This is clearly against the orders of 16th October 2024 that restrained the Defendants from collecting or receiving rent from the suit property. While it is evident that the Defendants do not agree with these orders, it should not be lost that a party is obligated to obey court orders even though they feel the order is null or valid, regular or irregular. As the Court of Appeal in *Refrigeration and Kitchen Utensils Ltd v Gulabchand Popatlal Shah & Another*, Civil Application No.39 of 1990(UR) held: ‘...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’
14. As the court orders restraining the Defendants from collecting or receiving rent from the suit property have not been varied and/or discharged, the Defendants cannot act against these orders simply because they feel otherwise about them. On whether the orders lapsed on 4th November 2024, I find in the negative. The record indicates that aforementioned orders, save for the order that directed the police to facilitate compliance thereof, have been maintained and extended since 12th October 2024 to date. The status quo orders of the court issued on 4th November 2024 were in respect of when the orders of 12th and 16th October 2024 were issued and not before. Thus, the Defendants cannot state that they were not in contempt because the said orders had lapsed. I also note that Mabeya J., never admitted that he was misled to issue the orders of 16th October 2024 as deponed by the Defendants in their further replying affidavit. Nowhere in the annexed reply by Mabeya J., to the complaint against him does he express regret or fault his decision to issue the orders of 16th October 2024. In any case, as I have stated earlier in this ruling, the interim orders have always been in force since 16th October 2024 to date.
15. From the above, can it be stated that the Defendants have been in contempt of the court’s orders? I have found that the said orders were clear, unambiguous and binding upon the Defendants who had knowledge of the same, the said orders have always been in force since they were issued and save for the use of police, they have never been discharged, varied or set aside. From the Defendants depositions, it is clear that they were aware of the said orders but they believed that the same were issued without jurisdiction and that the court was wrong in restraining them from collecting and receiving rent when the 2nd Defendant believes, it is the owner of the suit property and thus entitled to collect rent. This, in my view, is an admission of deliberate disregard and disobedience of the court’s orders. In any event, the Plaintiff has annexed evidence, which was not substantially controverted, that the Defendants have been issuing notices, pamphlets and circulars to tenants to pay rent to them through the impugned account and that tenants have actually been paying rent to them, against the court’s orders.



16. It is therefore my finding that the Defendants have been willfully and deliberately disobeying the court's orders and I find them to be in contempt of orders of this court. As to the penalty, I will borrow the late Majanja J.'s words in *Gatabaki & 2 others (All Suing as the Co-Administrators of the Estate of Samuel Mundati Gatabaki Deceased) v Muga Developers Limited & 3 others* [2023] KEHC 3324 (KLR) that ultimately the purpose of the contempt is to maintain the dignity of the court and its processes and the interest of the court and no doubt the applicants, in this case, the Plaintiff, is to ensure that court orders are obeyed and implemented. I will therefore give the Defendants an opportunity to purge their contempt by directing them not to issue any further adverse notices and pamphlets, disposing of, transferring, and / or whatsoever dealing in or interfering with the Plaintiff's business opportunities in the suit property, Further, the Defendants and the Interested Parties are restrained from directly or indirectly, by any means whatsoever, dealing with, transferring, using or otherwise dissipating the funds deposited in the Bank Account: Equity Bank (k) Limited, Account Name:xxxxxxx Client A/C, Account Number: 134xxxx699, by the traders operating in the suit property with effect from 1st October 2024. The Defendants are also restrained from demanding payments from the traders in the suit property, and from receiving such payments, disposing of, transferring, and/or whatsoever dealing in or interfering with the Plaintiff's business operations in the suit property.
17. As the Defendants and their agents have been collecting and receiving rent in violation of the court's orders, it is only appropriate that the said rent already collected be remitted to the Plaintiff forthwith. The Defendants are also directed to rescind the notices sent out to the tenants in the suit property and that all such notices are hereby quashed. The aforementioned should be done within 14 days of this ruling failure to which its members; Zakaria Bilal of Telephone Number (+254) 0725 * 509, Ali Muhsin of Telephone Number (+254) 0793 * 962, Omar Ahmed Sheikh of Telephone Number (+254) 0715 * 092, Ahmed Sheikh Omar of Telephone Number: (+254) 0725 * 509, Yusuf Abdulrahman Nzibo, Hassan Athman Hassan, Athman Kahela Mupe and Ibrahim Samuel Njuguna will be appropriately sentenced

Conclusion and Disposition

18. In the upshot, I now issue the following final orders:
1. The Defendants and their members: Zakaria Bilal of Telephone Number (+254) 0725 * 509, Ali Muhsin of Telephone Number (+254) 0793 * 962, Omar Ahmed Sheikh of Telephone Number (+254) 0715 * 092, Ahmed Sheikh Omar of Telephone Number: (+254) 0725 * 509, Yusuf Abdulrahman Nzibo, Hassan Athman Hassan, Athman Kahela Mupe and Ibrahim Samuel Njuguna are found guilty of contempt of the court's orders issued on 12th October 2024 and 16th October 2024 that were varied and extended on various dates .
 2. The Defendants and their members: Zakaria Bilal of Telephone Number (+254) 0725 * 509, Ali Muhsin of Telephone Number (+254) 0793 * 962, Omar Ahmed Sheikh of Telephone Number: (+254) 0715 * 092, Ahmed Sheikh Omar of Telephone Number: (+254) 0725 * 509, Yusuf Abdulrahman Nzibo, Hassan Athman Hassan, Athman Kahela Mupe and Ibrahim Samuel Njuguna are directed to rescind the notices issued to tenants of the suit property on payment of rent within 14 days of this ruling.
 3. The Defendants and their members: Zakaria Bilal of Telephone Number (+254) 0725 * 509, Ali Muhsin of Telephone Number (+254) 0793 * 962, Omar Ahmed Sheikh of Telephone Number: (+254) 0715 * 092, Ahmed Sheikh Omar of Telephone Number: (+254) 0725 * 509, Yusuf Abdulrahman Nzibo, Hassan Athman Hassan, Athman Kahela Mupe and Ibrahim



Samuel Njuguna are ordered to refund and remit to the Plaintiff all sums collected from the tenants in the suit property between 12th October 2024 to date within 14 days of this ruling.

4. All such adverse notices and pamphlets issued by the Defendants as from 12th October 2024 to the tenants in the suit property dealing in or interfering with the Plaintiff's business opportunities in the suit property are hereby quashed.
5. In the event of non-compliance of the above, the Plaintiff is at liberty to set the matter down for appropriate sentencing of the Defendants' members.
6. The Plaintiff is awarded costs of this application. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF APRIL 2025

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J.W.W. MONG'ARE

JUDGE

In the Presence of:-

1. Mr. Mbatai holding brief for Mr. Issa for the Plaintiff.
2. Mr. Nelson Havi SC for the Defendants.
3. Amos - Court Assistant

