



**Munga & another v Momanyi & 3 others (Petition E017 of 2023)
[2025] KEHC 5764 (KLR) (Commercial and Tax) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5764 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
PETITION E017 OF 2023**

PM MULWA, J

MAY 8, 2025

BETWEEN

ROBERT BICHAGE MUNGA 1ST PETITIONER

DOREEN NYAKERARIO ONWONGA 2ND PETITIONER

AND

GODFREY MARAMBE MOMANYI 1ST RESPONDENT

CUSUM ENERGY LIMITED 2ND RESPONDENT

STANBIC BANK KENYA LIMITED 3RD RESPONDENT

AND

ENERGY INTELLIGENCE AFRICA LTD NOMINAL RESPONDENT

RULING

1. The Court is called upon to determine an application dated 9th September 2024 brought by the Petitioners pursuant to Section 5 of the *Judicature Act*, Cap 8, Sections 1A, 1B, 3A and 38(c) of the *Civil Procedure Act*, and Order 40 Rules 2, 4, and 8, and Order 51 Rule 1 of the Civil Procedure Rules, 2010. The application seeks wide-ranging interim reliefs aimed at compelling the 1st Respondent to authorize specified payments, provide access credentials, comply with past court orders, and in default, be held in contempt and punished accordingly.
2. The application is grounded on the assertion that this Court, on 31st October 2023 and 14th December 2023, issued directives aimed at preserving the operations of the Nominal Respondent. These included, restoration of ICT systems and authorization of essential payments. It is alleged that the 1st Respondent, despite being aware of and served with the said orders, has willfully disobeyed



them, thereby paralyzing the company's operations, exposing it to statutory liabilities, and causing reputational damage.

3. The application is supported by the affidavit of Robert Bichage Munga, sworn on 9th September 2024. It is opposed by the 1st Respondent through a replying affidavit sworn on 23rd September 2024. The 1st Respondent contends that the company ceased operations in August 2023, rendering the alleged payments redundant. It is further argued that previous court orders were limited in scope and have been complied with to the extent possible. The 1st Respondent also accuses the Petitioners of misusing the court process to deplete the company's resources and introduce new reliefs not contemplated in the prior orders.
4. The application was canvassed by way of written submissions which the Court has duly considered. The Applicants maintain that the 1st Respondent's conduct amounts to deliberate and sustained contempt of court. The 1st Respondent, on his part, denies such allegations and asserts that the application is both premature and an abuse of court process.

Issues for determination

5. The following issues arise for determination:
 - a. Whether the 1st Respondent is in contempt of the court orders dated 31st October and 14th December 2023.
 - b. Whether the orders sought in the application dated 9th September 2024 should be granted pending the hearing and determination of the Petition.
6. The law governing contempt is well established. For a finding of civil contempt to issue, the applicant must prove to the required standard that: (i) the terms of the order were clear and unambiguous; (ii) the respondent had knowledge of the order; and (iii) there was deliberate disobedience of the said order (See Republic v. Principal Secretary, Ministry of Defence & Another ex parte George Kariuki Waithaka [2019] eKLR; and Economy Feed Mills Ltd v Andrew MukiteMusangi [2005] eKLR).
7. It is not in dispute that the Court issued orders on 31st October 2023 and 14th December 2023 and that the 1st Respondent was aware of the same. The critical issue is whether the 1st Respondent deliberately disobeyed those orders.
8. A close reading of the orders reveals that the Court directed the 1st Respondent to facilitate the continued operations of the Nominal Respondent and to refrain from any interference. Further, the Court ordered the maintenance of the status quo ante, which included payment of directors' salaries at the levels prevailing prior to August 2023.
9. Contempt of court is quasi-criminal in nature, and therefore, the standard of proof is higher than the balance of probabilities. In *Gatharia K. Mutikika v Baharini Farm Ltd* [1985] KLR 227, the Court observed:

“Contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily. The standard of proof must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt.”
10. Similarly, in *Oilfield Movers Ltd v Zahara Oil & Gas Limited* [2020] eKLR the court stated:

“It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or



motive of the existence of the order of the court forbidding it. The threshold is quite high as it involves possible deprivation of a person's liberty..."

11. It must therefore be demonstrated that the alleged contemnor deliberately and knowingly disobeyed the court order. In the present case, the 1st Respondent asserts that the company has ceased operations and therefore could not comply with the orders.
12. Upon evaluation of the material placed before the Court, I find that the applicants have not established, to the required standard, that the 1st Respondent deliberately disobeyed the court orders. Contempt proceedings are a serious matter, given that they have the potential to curtail an individual's liberty. Courts must be cautious and ensure that such findings are only made upon clear and convincing evidence.
13. In the circumstances, I am not satisfied that the applicants have proved their case to the requisite standard.
14. With respect to the prayers for specific payments, access to the company domain, and alteration of the bank mandate, the Court must proceed with caution. These prayers touch on core issues raised in the substantive Petition, and granting them at this interlocutory stage would risk prejudging the main suit and determining substantive matters prematurely.
15. The principles governing the grant of interlocutory injunctions were set out in *Giella v Cassman Brown* [1973] EA 358, that is; (i) a prima facie case with a probability of success, (ii) irreparable injury that cannot be adequately compensated by damages, and (iii) a balance of convenience.
16. Although the Applicants have raised legitimate concerns regarding operational paralysis, they have not shown that the specific payments sought fall within the ambit of the existing court orders or that the Nominal Respondent is presently in a financial position to meet those obligations. The 1st Respondent has, in contrast, provided a plausible assertion that the company may have ceased operations, rendering the issuance of broad financial directives potentially prejudicial.
17. Similarly, the prayer seeking to compel the 3rd Respondent to vary the bank mandate, if granted at this interlocutory stage, would risk interfering with the company's internal corporate governance framework. In the absence of a formal board resolution or clear corporate authorization, such relief would undermine due process and set a problematic precedent.
18. In light of the foregoing, the Court finds that the Applicants have not met the threshold for grant of the interlocutory reliefs sought. The prayers touching on contempt have not been proved to the required standard, and those seeking affirmative orders raise substantive issues more appropriately addressed at the full hearing of the Petition.
19. Accordingly, I find that the application dated 9th September 2024 is without merit and is hereby dismissed. Costs shall be in the cause.

Orders accordingly.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF MAY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Ms. Mureithi h/b for Mr. Mueke for Petitioners



Ms. Kiama h/b for Mr. Mageto for 1st Respondent

Court Assistant: Carlos

