



Decor Gypsum Board Limited v OCS Makongeni Police Station Thika & 4 others (Miscellaneous Civil Application E004 of 2024) [2025] KEHC 8085 (KLR) (5 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8085 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CIVIL APPLICATION E004 OF 2024
FN MUCHEMI, J
JUNE 5, 2025**

BETWEEN

DECOR GYPSUM BOARD LIMITED PLAINTIFF

AND

OCS MAKONGENI POLICE STATION THIKA 1ST CONTEMNOR

CHEN LIN 2ND CONTEMNOR

ZHU GUILIN 3RD CONTEMNOR

LIN XIANHUA 4TH CONTEMNOR

DECORBOARD COMPANY LIMITED 5TH CONTEMNOR

RULING

- Coming up for determination is the contemnors’ Notice of Preliminary Objection dated 20th March 2024 based on ground that the court lacks jurisdiction to determine the matter on the basis that this matter falls within the jurisdiction of the Environment and Land Court pursuant to the decision of the Court of Appeal in Co-operative Bank of Kenya Ltd vs Patrick Kangethe Njuguna & 5 Others [2017] eKLR. The second ground of objection is that this court lacks jurisdiction to hear and entertain the application dated 24th May 2023 for the reason that Thika Magistrate Court in CMCC No. E059 of 2023 is seized of jurisdiction under Section 10 of the Magistrates Court Act. Additionally, this court should not entertain the application for contempt while exercising its original jurisdiction but can only deal with an appeal from the Magistrate’s Court on a ruling or order of contempt of court.
- Directions were issued that parties put in written submissions and the record shows that the contemnors complied by filing submissions. The plaintiff on the other hand had not filed its submissions by the time of writing this ruling.



The Contemnors' Submissions.

3. The contemnors rely on the cases of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696 and Independent Electoral & Boundaries Commission vs Jane Cheperenger & 2 Others [2015] eKLR and submit that the preliminary objection raised is sustainable. The contemnors further rely on the cases of Owners of the Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd [1989] KLR 1 and Samuel Kamau Macharia & Another vs Kenya Commercial Bank & 2 Others [2012] eKLR and submit that the current court lacks jurisdiction to entertain the present application in respect to contempt when the trial court being Thika CMCC E059 of 2013 is seized with such jurisdiction under Section 10 of the Magistrate's Court Act. The contemnors argue that the matter in the trial court is still active and proceeding and the trial court is the same court that granted the orders which the applicant now cites them for contempt.

The Law.

Whether the preliminary objection is sustainable.

4. The case of Mukisa Biscuits Manufacturing Ltd vs West End Distributors (1969) EA 696 is notorious on the issue of what constitutes a preliminary objection. The court observed thus:-

.....a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.
5. Sir Charles Newbold P. stated:-

A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop.
6. Similarly the Supreme Court in the case of Hassan Ali Joho & Another vs Suleiman Said Shabal & 2 Others SCK Petition No. 10 of 2013 [2014] eKLR held that:-

A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.
7. Further in the case of Hassan Nyanje Charo vs Khatib Mwashetani & 3 Others, [2014] eKLR the court held that:-

Thus a preliminary objection may only be raised on a 'pure question of law.' To discern such a point of law, the court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.
8. Evidently, a preliminary objection should be founded upon a settled and crisp point of law, to the intent that its application to undisputed facts, leads to but one conclusion: that the facts are incompatible with that point of law.



9. The contemnors argue that the court does not have jurisdiction to entertain this application for contempt as the trial court in Thika CMCC No. E059 of 2023 which made the orders they have been cited for contempt, is seized with jurisdiction under Section 10 of the Magistrates Court Act.
10. The law on the question of jurisdiction was enunciated in the case of Owners of the Motor Vessel “Lilian S” vs Caltex Kenya Limited [1989] KLR 1 where the court held:-

Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.
11. On the source of jurisdiction, it was held in the case of Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & Others (2012) eKLR that:-

A court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.
12. Section 10 of the Magistrates Court Act provides:-
 1. Subject to the provisions of any other law, the Court shall have the power to punish for contempt.
 2. In the case of civil proceedings, the wilful disobedience of any judgment, decree, direction, order or other process of a court or wilful breach of an undertaking given to a court constitutes contempt of court.
13. I have perused the record and noted that the plaintiff filed a suit against the 2nd, 3rd and 5th contemnors at the Chief Magistrates Court at Thika being Civil Suit No. E059 of 2023. The Magistrate had issued orders dated 21st February 2023, 27th March 2023, 3rd April 2023 and 12th April 2023 allowing the plaintiff to access and continue operation in the manufacturing section of the suit premises located in Kamenu Ward, Makongeni and barred the 2nd, 3rd and 4th contemnors from trespassing or interfering with the suit premises. The respondents disobeyed the court orders prompting the plaintiff to file this application in this court citing the respondents for contempt of the said court orders.
14. It is not in dispute that this application dated 24th May 2023 is premised on orders made by the Chief Magistrate’s Court in Thika in Civil Suit No. E059 of 2023. Thus the orders upon which this application is based have emanated from the magistrate’s court. The Magistrates Court Act confers jurisdiction upon magistrates’ courts to hear and determine contempt proceedings in respect of orders made by the court. The magistrate’s court that issued the orders has jurisdiction to hear and determine the contempt proceedings.
15. I have perused the court record and noted that the plaintiff filed a Notice of withdrawal in CMCC No. E059 of 2023 on 27th June 2023. However, this application before this court was not withdrawn and it is therefore, still active.
16. I find that this application dated 24th March 2024 ought to have been filed before the Magistrate’s court in Thika CMCC No. E059 of 2023 which court has the requisite jurisdiction.
17. I find the preliminary objection dated 20th March 2024 successful and it is hereby upheld.
18. This application dated 24th May 2023 is hereby struck out with costs to the 2nd, 3rd and 5th respondents.



19. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 5TH DAY OF JUNE 2025.

F. MUCHEMI

JUDGE

