



**Bhogal & 3 others v Sheikh & Gregory Joint Receiver and Managers  
of Sam-Con Limited (In Receivership) & 3 others (Civil Suit  
38 of 2003) [2024] KEHC 3468 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3468 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL SUIT 38 OF 2003  
HI ONG'UDI, J  
APRIL 11, 2024**

**BETWEEN**

**NARWAR SINGH BHOGAL ..... 1<sup>ST</sup> PLAINTIFF  
AMRIK SINGH BHOGAL ..... 2<sup>ND</sup> PLAINTIFF  
HASPAL SINGH BHOGAL ..... 3<sup>RD</sup> PLAINTIFF  
ESTATE OF NARNJAN SINGH BHOGAL ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**ZAHIR SHEIKH & ANDREW GREGORY JOINT RECEIVER AND MANAGERS  
OF SAM-CON LIMITED (IN RECEIVERSHIP) ..... 1<sup>ST</sup> DEFENDANT  
NATIONAL BANK OF KENYA ..... 2<sup>ND</sup> DEFENDANT  
NAT BANK TRUSTEE AND INVESTMENT SERVICE  
LIMITED ..... 3<sup>RD</sup> DEFENDANT  
COMMISSIONER OF LANDS ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the Notice to show cause dated 4<sup>th</sup> August 2023 which was served on the 2<sup>nd</sup> defendant following the 1<sup>st</sup> plaintiff's application on the same.
2. The said Notice is supported by the affidavit of Harbinder Singh Bhogal the administrator ad litem of the estate of the 1<sup>st</sup> plaintiff herein and the same is dated 22<sup>nd</sup> December 2023. He deposed that the matter herein was concluded in the judgment of the court that was delivered on the 16<sup>th</sup> May 2019 which decreed that the plaintiffs pay unto the defendant a sum of ksh 28,933,638/= against which



- the defendants were to release to the plaintiff the title to the suit parcel number L.R 455/21. That the plaintiffs complied by paying the defendants the said decreed sum on 22<sup>nd</sup> November 2022.
3. He deposed further that after receiving the entire decretal sum, the defendants embarked on a mischievous scheme to delay the release of the title. The failure to comply with the decree necessitated the issuance of the Notice to show cause. That the numerous letters by their advocate to the defendants to effect release of the title had elicited no response. He added that the defendants' advocates only responded on 10<sup>th</sup> August 2023 alleging that the reason for delay was the fact the title was misplaced but had finally been retrieved.
  4. He deposed that the said advocate had proposed a conditional release of the said title, a condition which the court had not imposed while decreeing the release of the title to the plaintiffs. He added that on 19<sup>th</sup> October 2023, they forwarded to the defendants' advocates a draft transfer with all the details of the transferee for facilitation.
  5. In response to the Notice to show cause the defendants filed two replying affidavits. In the affidavit dated 14<sup>th</sup> August 2023, it is averred that following receipt of payment by the plaintiffs, the 2<sup>nd</sup> defendant immediately began making necessary arrangements for transfer and release of title to the suit property but could not proceed as the original title documents could not be traced in its custody.
  6. It is averred further that in a Judgment rendered in Nairobi HCCC 174 of 2003 *Sam-Con Limited v National Bank of Kenya & 2 Others*, one of the main issues of contention, was the outstanding amount on a loan facility advanced to Sam-con Limited which was secured by a number of securities including the suit property herein. That in the interest of justice to both the plaintiffs and the defendants, the 2<sup>nd</sup> defendant prayed that the 3<sup>rd</sup> defendant be allowed to release the title to the plaintiffs but the release be conditional on the decree holders not selling, disposing or dealing with the said title in any way that may prejudice the test of the bank in the same if it succeeds on appeal.
  7. In the affidavit dated 27<sup>th</sup> October 2023, counsel averred that on the 25<sup>th</sup> September 2023, a transfer instrument was forwarded to the plaintiffs' advocates indicating his client's willingness to comply. He added that the only hold up was as a result of the plaintiffs advocates delay in providing the required information to effect the discharge, transfer and release of title of the suit property. Further, that their client was keen on avoiding numerous suits from aggrieved parties in its compliance with this court's orders such as the 3<sup>rd</sup> plaintiff who does not want the title released to the firm of Sheth & Wathigo Advocates.
  8. Counsel went on to depose that they had been instructed to seek direction from this Court on how to proceed as their client would comply with any directions given by this court in order to avoid further suits from the parties. He urged the court to dismiss the Notice to show cause.

### **Determination**

9. This court has perused the Notice to show cause, the affidavit in support and the replying affidavits by the defendants. It is not in dispute that a judgment was delivered on the 16<sup>th</sup> May 2019 which decreed that the plaintiffs pay unto the defendant a sum of kshs. 28, 933,638/= against which the defendants were ordered to release to the plaintiff the title to the suit parcel number L.R 455/21. The defendants have acknowledged receipt of the decretal sum from the plaintiff.
10. In view of the above, it is clear that the orders issued by the court in the aforementioned judgment are within the knowledge of the defendants herein and the same have not been complied with, by the defendants.



11. The Court of Appeal in the case of *A.B. & Another v R.B.*, Civil Application No. 4 of 2016 [2016] eKLR cited with approval the Constitutional Court of South Africa's decision in *Burchell v Burchell*, Case No.364 of 2005 where it was held:

“Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. The Constitution states that the rule of law and supremacy of the Constitution are foundational values of our society. It vests the judicial authority of the state in the court and requires other organs of the state to assist and protect the court. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. Failure to enforce court orders effectively have the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law.”

12. The defendants in explaining the reasons for non-compliance averred in their replying affidavits that there were appeals pending in two cases where the suit property was used as security. Further, that the plaintiffs' advocates had delayed in providing the required information to effect the discharge, transfer and release of title of the suit property. In addition, that the 3<sup>rd</sup> plaintiff had requested that the title for suit property should not to be issued to Sheth & Wathigo Advocates.
13. In my view, the above reasons for failure to release the title to the suit parcel number L.R 455/21 cited by the defendants in their replying affidavits are not satisfactory to this court to warrant a dismissal of the Notice to show cause.
14. The judgment of 16<sup>th</sup> May 2019 by this court has not been set aside or stayed by a higher court. The defendants have no choice but to comply with the same. The Judgment in Nairobi High Court Commercial & Tax Division Civil Case No. 174 of 2003 by Justice Mabeya dated 16<sup>th</sup> June, 2023 (annexture SM – 1) has not issued any orders in respect of the suit land L.R 455/21.
15. I therefore allow the Notice to show cause and direct the 2<sup>nd</sup> defendant to comply with the decree of this court in respect of the Judgment of 16<sup>th</sup> May, 2019. Compliance should be on or before 15<sup>th</sup> April, 2024.
16. The 2<sup>nd</sup> defendant/respondent pay the applicant costs assessed at Shs 100,000/=
17. Orders accordingly.

**DELIVERED, VIRTUALLY, DATED AND SIGNED THIS 11TH DAY OF APRIL 2024 IN OPEN COURT AT NAIROBI.**

**H. I. ONG'UDI**

**JUDGE**

