



Bryce Broadcast & Technologies (K) Ltd v Makotsi & another (Miscellaneous Application E032 of 2023) [2024] KEHC 10727 (KLR) (7 August 2024) (Ruling)

Neutral citation: [2024] KEHC 10727 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
MISCELLANEOUS APPLICATION E032 OF 2023
REA OUGO, J
AUGUST 7, 2024**

BETWEEN

BRYCE BROADCAST & TECHNOLOGIES (K) LTD APPLICANT

AND

HOWARD MAKOTSI 1ST RESPONDENT

FLORENCE LUSABA 2ND RESPONDENT

RULING

1. In a Ruling dated the 27th of February 2024 this Court pronounced itself as follows;
 - a. The Applicant’s application seeking to cite the Respondents for contempt of court dated 15th May 2023 is hereby allowed and the Respondents are found to be in contempt of Court for disobeying the Court’s orders of 28th October 2022.
 - b. The Respondents are hereby directed to purge their contempt within the next five (7) days by disclosing the whereabouts and giving a factual and correct account of the said property thereto.
 - c. In default of compliance with order (b) above, a Notice to Show Cause will be issued against the Respondents to appear in person before the Court on 6th March 2024 to show cause why they should not be committed to civil jail for disobedience of this Court’s orders of 28th October 2022.
2. Following the above orders, the respondents filed two affidavits a replying affidavit dated the 11th of August 2024 (a date the 1st respondent avers is an error, the same should be dated 11th of April 2024) and a supplementary affidavit dated the 29th of April 2024. Howard Makotsi the 1st respondent depones as follows; he has the authority to depone the affidavit on behalf of the 2nd respondent. He avers as follows; the goods giving rise to the contempt application are safely stored within the premises



after being catered away from the premises occupied by their previous tenant after defaulting in rent arrears. The goods are in the manner and form that the tenant left them. They are willing and ready to undertake a joint inventory of the goods which are machines that are not known to them by name or serialization since the goods were previously in the possession of their tenant who defaulted in rent. They were not privy to the contract between their previous tenant and the applicant. They have offered to the respondents through email for them to communicate with their contact person guarding the premises where the goods are stored which option the applicant has failed to explore and they cannot therefore not purport to allege that they were denied access. They are still ready and willing to provide access to the applicant's access and have a joint inventory undertaken to ascertain the existence of the goods. The goods are occupying space that they could rent to another tenant and they are suffering loss as they have also engaged an employee to mind the safety of the said properties in compliance with the order. It would be prejudicial to commit them to civil jail when the goods have not been sold which the impugned order sought to restrict. The applicant's insistence that they ought to be committed to civil jail is mala fides tainted with ill will and malice, especially in the absence of any demonstration that the said goods have been sold.

3. Carolyne Okiko the applicant's director responded through an affidavit dated 19th April 2024. This is her response to the affidavit dated '11th August 2024'. The contempt has not been purged and the respondents should be committed to civil jail for a term of six months until the contempt is purged. There is no indication of the location of the alleged goods that comprise the suit property (or goods). The respondents have not given the applicant access to the suit property to satisfy themselves of the existence and condition of the suit property. The respondents have failed to take any step towards compliance with the court's order and have instead resorted to only making averments in relation thereto (their compliance). There is no inventory presented before the court detailing the description of the alleged suit property(or goods) as corresponding to the suit property (or Goods) that were being preserved. It is not known which of the pictures presented by the respondent corresponds to which item(s). No concurrence as to the existence, state, and condition of the suit property (or Goods) has been achieved by the respondents with the applicant.
4. I have considered the affidavits filed by the parties and the oral submissions. The issue in this matter is whether the respondents have purged their contempt. The applicant alleged that the respondents are holding onto goods that were attached when they levied distress against their former tenant and that the respondents have also failed to disclose the location of the goods and/or give them access to the goods that were in the respondents' premises. According to the respondents, the goods the applicant sought to have released belonged to a tenant the applicant had levied distress against. The goods are still within their premises and the applicant has been granted access to the goods, and the applicant has been informed of the same. The respondents further averred and submitted that they are not able to list the goods as they are not able to properly identify them. In my view, the respondents have explained the efforts they have made to have the applicant access their goods. The respondents were not privy to the contract between the applicant and their tenant. They own the building. They have explained that they are even incurring losses as a result of having the goods on their premises. I am persuaded that they have through their communication sufficiently informed the applicants where the goods are and it's now upon the applicant to go to the premises to access the goods and take an inventory. The respondents have explained why they cannot come up with an inventory, to push them to come up with an inventory of goods that were not in their use or which they are not familiar with would be prejudicial to the respondents. I find that the respondents have not denied the applicants access as claimed. I see no need to commit the respondents to civil jail as sought by the applicant as they have sufficiently purged the contempt. In contempt proceedings, a civil court has no interest in punishing a party unless the party leaves the court with no option to do so. The respondents have sufficiently explained themselves



as to why they did not or could not comply with the court order in Bungoma CMCC E344 of 2022 Bryce Broadcast & Technologies (K) Ltd -vs- Howard Makosti & Another issued on 28th March 2022. The court hereby discharges the Respondents Howard Makosti and Florence Lusaba from the alleged contempt of court and the proceedings are hereby terminated and closed Each party shall bear its costs.

DATED, SIGNED, AND DELIVERED AT BUNGOMA ON THIS 7TH DAY OF AUGUST 2024.

R.E.OUGO

JUDGE

In the presence of:

Miss Jumba - For the Applicant

Respondents - Absent

Wilkister - C/A

