

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
HCCOMM NO. E071 OF 2024

(CONSOLIDATED WITH HCCOMM NO. E072 OF 2024, HCCOMM NO. E073 OF 2024, HCCOMM NO. E074 OF 2024, HCCOMM NO. E076 OF 2024 & HCCOMM NO. E077 OF 2024)

IN THE MATTER OF HOUSING SCHEMES LIMITED

-AND-

IN THE MATTER OF CONTRAVENTION OF THE COMPANIES ACT NO. 17
OF 2015

-AND-

IN THE MATTER OF CONTRAVENTION OF THE ARTICLES OF
ASSOCIATION OF HOUSING SCHEMES LIMITED

-BETWEEN-

MUKTA CHANDRAKANT GHEEWALA (Suing as the
Executrix of the Estate of Chandrakant

Shamjibhai Gheewala).....1ST PLAINTIFF/APPLICANT

SHRIKESH GHEEWALA.....2ND PLAINTIFF/APPLICANT

MAMTA GHEEWALA.....3RD PLAINTIFF/APPLICANT

-VERSUS-

ELESHKUMAR CHANDRAKANT

GHEEWALA.....1ST DEFENDANT/RESPONDENT

HOUSING SCHEMES LIMITED..... INTENDED 2ND DEFENDANT

RULING NO. 3

1. The plaintiffs/applicants filed a Notice of Motion application dated 23rd June 2024 under the provisions of Sections 1A, 1B, 3, 3A & 63 of the Civil Procedure Act, Order 40 Rule 3 and Order 51 Rule 1 of the Civil Procedure

Rules and all other enabling provisions of the law and powers of the Court. The plaintiffs pray for orders that this Court issues a declaration that the defendant is in contempt of the Court Orders of 4th April 2025 by refusing to withdraw his 2018 application at the Business Registration Service (BRS) to link Housing Schemes Limited to the BRS portal and that the defendant be punished/sanctioned under Order 40 Rule 3 of the Civil Procedure Rules, 2010 for disobedience of the said Court Order. The plaintiffs also pray for an order compelling the defendant to withdraw his 2018 BRS linking application, to enable the plaintiffs to link the company and proceed with the lease extension process for L.R. No. 209/4796/4 and in the alternative, an order directing the BRS to strike out the defendant's application and allow the 2nd plaintiff, a Director of the company, to link it.

2. The application is premised on the grounds on the face of the Motion, and it is supported by three affidavits sworn on the same day by Mr. Shrikesh Gheewala, Mrs. Mukta Chandrakant Gheewala & Ms Mamta Gheewala, the plaintiffs herein. Mr. Shrikesh averred that he is a Director of Housing Schemes Limited, which is part of the estate of the late Chandrakant Shamjibhai Gheewala and that the said company owns the property known as L.R. No. 209/4796/4 valued at Kshs.350,000,000/=. He deposed that the company's lease is due to expire in November 2025, and renewal requires linking the company on the BRS online portal. He contended that the defendant who is also a Director of Housing Schemes Limited, secretly filed a linking application in 2018 but has since failed, refused, or neglected to complete or withdraw it, thereby blocking the company's registration and frustrating the lease renewal process.
3. Mr. Shrikesh further stated that despite demands and the Court Orders of 4th April 2025 restraining him from interfering in the company's affairs without

approval, the defendant has remained uncooperative and issued unreasonable demands. Mr. Shrikesh deposed that the defendant's conduct amounts to deliberate obstruction, disobedience of the said Court Orders and a continuation of his pattern of interfering with the estate companies as previously observed by the Court in **HCCC E317 of 2024**. Mr. Shrikesh contended that unless the Court intervenes to compel withdrawal of the pending application, the company risks losing its sole asset due to expiry of the lease.

4. Ms Mamta averred that under a Mediation Settlement Agreement dated 31st July 2019, adopted as a Court Order on 16th October 2019, she acquired beneficial entitlement to the entire shareholding and assets of Housing Schemes Limited. She deposed that although the formal transfer of shares has been delayed due to the defendant's frivolous applications, she remains the beneficial owner of the company. She asserted that she fully associates herself with the contents of the supporting affidavits sworn by the 1st & 2nd plaintiffs, and adopted them as her own.
5. On her part, Ms Mukta averred that she is the sole Executrix of the will of the late Chandrakant Shamjibhai Gheewala and a beneficiary of his estate. She averred that the deceased held seven shares in Housing Schemes Limited, which is the subject of this suit, and that she is a member of the company and competent to swear the affidavit herein. She confirmed that she had read the affidavits sworn by the 2nd & 3rd plaintiffs and stated that she fully agreed with them. She adopted their contents as her own.
6. In opposition to the instant application, Mr. Eleshkumar Chandrakant Gheewala, the defendant herein, and a Director of Housing Schemes Limited, filed a replying affidavit sworn on 13th August 2025. He averred that in 2018, Housing Schemes Limited appointed High Peak Registrars as its Company

Secretary to replace the previous Secretary. That thereafter, High Peak Registrars initiated the BRS linking process, but the 2nd plaintiff objected to it and wrote to High Peak Registrars and the Registrar of Companies to stop them from making any changes to Housing Schemes Limited. For that reason, he contended that the 2nd plaintiff is responsible for the stalled application.

7. Mr. Eleshkumar denied being in contempt of the Court Orders of 4th April 2025 and stated that he cannot be faulted for actions taken in 2018/2019 before the said Orders were issued. He further disputed the plaintiffs' claim that the 3rd plaintiff owns the entire shareholding in Housing Schemes Limited, asserting that she is only entitled to the deceased's shares. He stated that a company is a separate legal entity distinct from its shareholders, and asserted that the linking process was under High Peak Registrars and not within his control. Further, that the plaintiffs have not shown the efforts they have made to follow up with the said Registrars on the same.
8. The application herein was canvassed by way of written submissions. The plaintiffs' submissions were filed on 23rd August 2025 by the law firm of Kimamo Kuria Advocates, whereas the 1st defendant's submissions were filed on 15th September 2025 by the law firm of Nyaanga & Mugisha Advocates. Although the 2nd intended defendant's submissions were filed by the law firm of Tabut & Tabut Advocates on 4th September 2025 & 30th September 2025, Ms Tabut, learned Counsel for the intended 2nd defendant informed this Court on 16th September 2025 that the 2nd intended defendant was not a party to the instant application. This Ruling has therefore been written without their input.
9. Mr. Kimamo, learned Counsel for the plaintiffs submitted that the defendant's refusal to withdraw the pending company linking application lodged by him in 2018 at the BRS, has blocked the company from being linked; and his failure to

consent to an order directing that the said linking application be struck out so that the company can proceed with the urgent process of applying for the renewal of its lease over the property known as L.R. No. 209/4796/4 amounts to interference with the management and affairs of Housing Schemes Limited, thus the defendant is in contempt of the Orders issued on 4th April 2025, by this Court. Counsel relied on the case of **Samuel M. N. Mweru & others v National Land Commission & 2 others** [2020] KEHC 9233 (KLR), and urged this Court to exercise its inherent powers under Order 40 Rule 3 of the Civil Procedure Rules, 2010, to punish the defendant for contempt.

10. Mr. Kimamo stated that the lease over L.R. No. 209/4796/4 is due to expire in November 2025 and its renewal requires the company to be linked at the BRS, but the plaintiffs' efforts to effect such linking have been frustrated by the defendant's 2018 application. Counsel submitted that despite a written request dated 29th May 2025 urging the defendant to either finalize or withdraw the application, he has refused to comply. Mr. Kimamo argued that with barely three and a half months left before expiry of the lease over L.R. No. 209/4796/4, the defendant's conduct places the company at grave risk of losing its sole asset. He urged this Court to either order the defendant to withdraw his 2018 linking application, or direct the BRS to strike out the same, thereby enabling the 2nd plaintiff to link the company and proceed with the application for extension of the lease. He asserted that unless the Orders being sought herein are granted, the company will lose its only property to its irreparable prejudice.
11. Mr. Nyaanga, learned Counsel for the defendant submitted that the plaintiffs have failed to establish the elements necessary to sustain contempt of Court proceedings. He posited that for contempt to be proved, the plaintiffs must

demonstrate that the terms of the Orders were clear and binding, that the defendant had knowledge of the Orders, that he acted in breach of the said Orders, and that such breach was deliberate, as was set out by the Court in the case of **Samuel M. N. Mweru & others v National Land Commission & 2 others** (supra) and the Court of Appeal case of **Mutitika v Baharini Farm Ltd** [1985] KECA 60 (KLR). Counsel argued that the Orders in question were issued on 28th March 2025, yet the impugned actions were undertaken in 2018 and 2019 which was, well before the Orders in issue were made, and the law does not operate retrospectively.

12. Mr. Nyaanga stated that the application complained of was not filed at the BRS by the defendant personally but by High Peak Registrars, who had been duly appointed as Company Secretary through a valid company resolution, thus no such application exists in the defendant's name for him to withdraw. Counsel contended that the reliefs being sought by the plaintiffs would in any event be incapable of performance. He stated that under Section 107 of the Evidence Act, the burden of proof lay squarely on the plaintiffs to demonstrate that the defendant filed the said application, yet they had not placed any evidence before this Court to substantiate their allegations or to show that they suffered any prejudice as a result.

ANALYSIS AND DETERMINATION.

13. I have considered the application herein, the grounds on the face of it, and the affidavits filed in support thereof. I have also considered the replying affidavit filed by the defendant and the written submissions by Counsel for the parties. The issues that arise for determination are –

- i) **Whether the defendant is in contempt of this Court's Orders issued on 28th March 2025 and should be punished and/or sanctioned for the same; and**
- ii) **Whether the defendant should be directed to withdraw the linking application filed at the BRS in the year 2018 or at any other time and/or the Business Registration Services be directed to strike out the said application.**

Whether the defendant is in contempt of this Court's Orders issued on 28th March 2025 and should be punished and/or sanctioned for the same.

14. This Court derives its jurisdiction to punish for contempt of Court from Section 5 of the Judicature Act which states that –

Contempt of Court

- 1) ***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 such power shall extend to upholding the authority and dignity of subordinate Courts.***
 - 2) ***An order of the High Court made by way of punishment for contempt of Court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.***
15. The import of the above provisions was considered by the Court of Appeal in the case of **Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others** [2014] KECA 840 (KLR) as follows -

the English law on committal for contempt of Court under Rule 81.4 of the English Civil Procedure Rules, which deals with breach of

judgment, order or undertakings, was applied by virtue of section 5(1) of the Judicature Act which provided that:

(1). 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 the subordinate Courts.”

16. From the above decision, it is evident that both the High Court and the Court of Appeal have the power to punish parties whose conduct undermines the authority of the Court. It is a settled principle that any person against whom a Court of competent jurisdiction issues an Order is obligated to obey it, unless and until it is varied or set aside, regardless of their personal views as to its validity. It is also trite law that Court Orders are not issued in vain and willful disobedience of such Orders is unlawful.
17. The established test for contempt of Court in cases of disobedience of a civil Court Order is whether the breach was committed deliberately and in bad faith. In the often-cited case of **Samuel M. N. Mweru & others v National Land Commission & 2 others** (supra), the Court in disallowing an application similar to this one held as follows-

It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. Perhaps the most comprehensive of the

elements of civil contempt was stated by the learned authors of the book Contempt in Modern New Zealand who succinctly stated:-

"There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that: -

- a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;*
- b) the defendant had knowledge of or proper notice of the terms of the order;*
- c) the defendant has acted in breach of the terms of the order; and*
- d) the defendant's conduct was deliberate."*

18. Contempt of Court proceedings are *quasi-criminal* in nature and since the liberty of a person is at stake, the standard of proof is higher than in civil cases. This principle was reiterated in the case of **Gatharia K. Mutikika vs Baharini Farm Ltd** (supra).
19. In the present case, the Orders said to have been disobeyed by the defendant were made on 28th March 2025. The conduct complained of by the plaintiffs is the defendant's filing of a company linking application at the Business Registration Service in 2018, which has since remained pending, thus blocking the plaintiffs from linking the company to the BRS portal. On the face of it, the impugned acts predate the existence of the Orders of this Court. Contempt cannot however lie for acts undertaken before the said Orders were made, as disobedience presupposes the existence of binding and operative Orders. The plaintiffs however argued that the defendant's continuing refusal to complete or

withdraw the said application amounts to ongoing disobedience of this Court's Orders restraining him from interfering in the company's affairs.

20. This Court in its Ruling delivered on 28th March 2025, issued Orders of temporary injunction restraining the defendant from convening or holding any general meeting of the specified companies and from exercising majority shareholder rights or interfering with the management and operations of the said companies without the plaintiffs' approval or Court Order. Upon consideration of the plaintiffs' argument, this Court notes that while their grievance is not without foundation, it is evident that the Orders made by this Court had no direct link with the impugned BRS application. Further, the defendant having been restrained from exercising majority shareholder rights or interfering with the management and operations of Housing Schemes Limited, could not deal with the said application in any way.
21. In addition to the foregoing, there is no evidence on record showing that the BRS application is in the defendant's personal control or that he presently has the legal capacity to withdraw it. It is not in contest that the said application was lodged by High Peak Registrars, who were at the time duly appointed as the Company Secretary for Housing Schemes Limited. As earlier stated contempt cannot lie for actions that predate the issuance of a Court Order. The continuing failure to act cannot be imputed to the defendant personally, absent of proof of control over the BRS application.
22. In the circumstances, I am not persuaded that the elements necessary to sustain a charge of contempt to warrant this Court to hold that the defendant is in contempt of this Court's Order issued on 28th March 2025, have been satisfied or proved. There is therefore no justification for him to be punished or sanctioned for contempt of Court.

Whether the defendant should be directed to withdraw the linking application at the BRS filed by him in the year 2018 or at any other time and/or the Business Registration Services be directed to strike out the said application.

23. An application to link Housing Schemes Limited to the BRS portal was lodged in 2018 and remains pending. The plaintiffs contended that the said application was filed by the defendant personally. Upon perusal of the defendant's replying affidavit, it is evident that he is not opposed to the linking of Housing Schemes Limited to the BRS portal. The defendant contended that the pending linking application was initiated by High Peak Registrars in their capacity as the duly appointed Company Secretary for the said company, hence he is not in a position to either withdraw it or complete it.
24. It is not in contest that the lease over L.R. No. 209/4796/4 is due to expire in November 2025, which creates a real risk of Housing Schemes Limited losing its only known asset if renewal is not pursued in good time. It is therefore in the best interest of the company as a going concern and for protection of all its Directors, shareholders and members, that an expeditious resolution be secured. It is worthy of note that the pendency of the incomplete linking application has stalled the company's ability to effect registration and proceed with the urgent process of applying for extension of the lease. As was held by this Court in its Ruling delivered on 28th March 2025, Courts have the power under Section 782 of the Companies Act to make Orders for protection of members against oppressive conduct and unfair prejudice.
25. This Court is therefore persuaded that it should exercise its inherent jurisdiction, as well with its powers under Sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act, and Section 782 of the Companies Act, to make such

orders as are necessary to safeguard the substratum of the suit and prevent the paralysis of Housing Schemes Limited's affairs.

26. This Court is not persuaded that the defendant can be compelled personally to withdraw the 2018 BRS application in the absence of evidence that he controls or has access to it. However, to forestall prejudice and to ensure the company proceeds with renewal of its lease, I am satisfied that the appropriate order I should make is to direct the Business Registration Service (BRS) to strike out the pending application lodged in 2018 relating to Housing Schemes Limited and thereafter permit the 2nd plaintiff, a Director of the company, to properly link it on the portal and proceed with the lease renewal process.
27. It is my finding that the instant application is partly merited. It is hereby allowed in the following terms -

- i) This Court hereby grants an order directing the Business Registration Service to strike out the 2018 Business Registration Service (BRS) linking application and allow the 2nd plaintiff, Mr. Shrikesh Gheewala, a Director of Housing Schemes Limited, to link it; and**
- ii) Costs of the application herein shall be in the cause.**

It is so ordered

DATED, SIGNED and DELIVERED at NAIROBI on this 3rd day of October 2025. Ruling delivered through Microsoft Teams Online Platform.

NJOKI MWANGI

JUDGE

In the presence of:-

Ms Kamau holding brief for Kimamo Kuria for the plaintiffs

Ms Kale holding brief for Mr. Nyaanga for the defendant

Mr. Kipsang holding brief for Ms Tabut for the 2nd intended defendant
Ms B. Wokabi - Court Assistant.

ORIGINAL