

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
ELC CASE NO. 212 OF 2021

GREENBELT WAREHOUSES LIMITED PLAINTIFF

VERSUS

MUNYAKA HOLDING LTD 1ST DEFENDANT

THE LAND REGISTRAR, MOMBASA 2ND DEFENDANT

HAMISI PETER MUMBA (In his Capacity as the Administrator of the Estate of Kidemu Chabo Kamwenga) 3RD DEFENDANT

AND

HUSSEIN ABDI MOHAMED INTENDED INTERESTED PARTY

RULING

1. Before the court for determination are two (2) applications. The first application dated 3rd December 2024 has been filed by Hussein Abdi Mohamed (the Intended Interested Party). The second application has been instituted by Munyaka Holdings Ltd (the 1st Defendant).
2. In the first application, the Intended Interested Party prays for an order that the court be pleased to grant him leave to be

enjoined as an Interested Party herein. The application which is supported by an Affidavit sworn by the Intended Interested Party is premised on the grounds that:

- i. The Interested party herein purchased the suit property from the 3rd Defendant herein;**
 - ii. Shortly after the purchase, a dispute occurred and the 3rd Defendant sued the Intended Interested Party and obtained an order on 5th October, 2012;**
 - iii. Thereafter the Intended Interested Party sold the property to the Plaintiff herein; and**
 - iv. The Intended Interested Party is thus a necessary party to these proceedings to enable this Honourable Court make a just determination of the matter based on merits.**
3. By the second application, the 1st Defendant prays for orders as follows:
- a) Spent;**
 - b) That this Honourable Court be pleased to make an order punishing the Plaintiff/Respondent by way of**

committal to prison for a term not exceeding six months or imposing a fine or both for having deliberately disobeyed the court order made by Hon. Justice L. Naikuni on the 3rd November 2021;

c) That this Honourable Court be pleased to issue an order to the OCS Nyali Police Station to enforce the permanent injunction against the Plaintiff through eviction and by way of committal to prison for a term not exceeding six months or imposing a fine or both for interfering with the suit property;

d) That an order be issued against the Plaintiff/ Respondent restraining it from interfering with the property as it was so ordered; and

e) That the Plaintiff/Respondent be condemned to pay the costs of this application.

4. The second application is supported by an Affidavit sworn by the 1st Defendant's representative Charles Kang'ethe and is premised on the grounds inter alia:

i. That on 3rd November, 2021 an order was issued directing the parties to maintain status quo;

- ii. That the said order also directed the Land Registrar to register an inhibition against the suit property under the provisions of Section 68 (1) of Land Registration Act;**
- iii. That despite the said orders the Plaintiff has continued to deal with the property and has forcefully entered, graded the land and drilled a borehole thereon;**
- iv. That the Plaintiff was duly served with the Court order and is fully aware of its contents and implications;**
- v. That the Plaintiff's actions have caused significant disruption and damage to the suit property and the continued interference threatens to render the property irreparable; and**
- vi. That it is extremely important that the Court do stamp its authority to ensure that Court orders are obeyed and given the respect and dignity they deserve.**

5. Greenbelt Warehouse Limited (the Plaintiff) is opposed to the application. In a Replying Affidavit sworn on its behalf by its

Manager Zablon Awino, the Plaintiff avers that the photographs attached to the Affidavit in support of the application do not relate in any way to the property and that no activities have been undertaken on the suit property.

6. The Plaintiff avers that it owns the adjoining plots subject title No. 2147/MNB where it is currently drilling a borehole. Further, the Plaintiff asserts that the court orders did not prohibit development but only registration or subdivision of the land. It is the Plaintiff's case that the application for contempt is totally unwarranted as there is no evidence whatsoever that the suit property is the one in the photographs annexed to the application.
7. I have carefully perused and considered the two applications and the respective responses thereto.
8. By the first application, the Intended Interested Party has sought for orders to be joined as a necessary party to the suit. That application is premised on the grounds that he had purchased the suit property from the 3rd Defendant and that he later sold it to the Plaintiff herein. The application is opposed by the 1st Defendant.

9. In regard to joinder of parties, Order 1 Rule 10 of the Civil Procedure Rules provides that:

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

10. In the case of ***Departed Asians Property Custodian Board -vs- Jaffer Brothers Ltd (1999) 1EA 55***, it was held that:

“A clear distinction is called for between joining a party who ought to have been joined as a Defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party's presence is necessary in order to enable the court

effectually and completely adjudicate upon and settle all the questions involved in the cause or matter..."

11. In his application before the court, the Intended Interested Party avers that he is a necessary party to the proceedings and that his presence would enable the court to make a just determination of the matter based on the merits.
12. In ***Pravin Bowry -vs- John Ward & Another (2015) eKLR***, the Court of Appeal outlined the principles for consideration in an application for joinder of parties to a suit and echoed the findings in the Ugandan case of ***Deported Asians Custodian Board -vs- Jaffer Brothers Ltd (199) 1 EA 55 (SCU)***, where the court stated as follows:

"For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in that suit. Alternatively, a person qualifies (on an application of a defendant) to be joined

as a co-defendant, where it is shown that the Defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”

13. In the matter before the Court, the Intended Interested Party asserts that he sold the suit property to the Plaintiff. That fact is supported by an annexed Sale Agreement dated 12th December 2014 meaning that he sold the property more than six (6) years before the dispute herein would arise. As it were, upon sale of land to another party, the vendor relinquishes any interests and/or rights pertaining to that property and other than being a witness to the fact of the sale, I did not find any reason that would qualify the Intended Interested Party as a necessary party in these proceedings.
14. Accordingly, I did not find any merit in the first application dated 3rd December 2024.
15. By the second application, the 1st Defendant urges the court to make a finding that the Plaintiff is in contempt of the orders issued herein on 3rd November 2021 and to punish the Plaintiff accordingly.

16. Black's Law Dictionary (11th Edition) defines contempt of court as:

“Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”

17. In that respect, section 29 of the Environment and Land Court Act, 2011 provides that:

“Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.”

18. In ***Samuel M.N. Mweru & Others -vs- National Land Commission & 2 Others (2020) eKLR***, Mativo J. [as he then was] held as follows:

“40. 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 wilfulness 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.”

19. In the matter before me, it is evident that on 3rd November 2021, the Hon. Justice L. Naikuni issued orders herein as follows:

“1.

2. That status quo to be maintained meaning the person who is in occupation and/or possession to remain on it but no registration and/or subdivision of whatever form to take place on the suit land until it is heard and determined.”

20. The Plaintiff has not disputed that indeed it was well aware of those orders. It is however its case that it has not disobeyed the order as the borehole it is accused of drilling is on an adjacent piece of land owned by itself.

21. As regards the standard of proof in contempt proceedings, the Court of Appeal delivered itself as follows in ***Mutitika -vs- Baharini Farm Limited (1985) KLR, 229, 234:***

“In our view, the standard of proof in contempt proceedings must be higher than proof on the balance

of probabilities, almost but not exactly, beyond reasonable doubt...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature. The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor's conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the Court Order."

22. In the matter herein, the 1st Defendant has annexed a Police Occurrence Book (OB) extract No. 15/18/03/2025 from Nyali Police Station to support its contention that the Plaintiff/Respondent had forcefully entered into the suit property. That OB extract neither mentions the Plaintiff nor the basis upon which the complaint was made. It does not mention entry or any occurrence in the suit property.

23. In addition, the 1st Defendant has annexed photographs marked as annexure “CK4” which is alleged to be that of the suit property on the date of the alleged illegal entry. There is no evidence to support the contention that the photographs were indeed those of the suitland and that there were developments being carried thereon by the Plaintiff.
24. In the result, I was not persuaded that the Plaintiff had wilfully disobeyed the orders issued by this court.
25. Accordingly, I did not find merit in the two Motions dated 3rd December 2024 and 25th March 2025, I dismiss the two with costs.

Ruling dated, signed and delivered in open court and virtually at Mombasa this 16th day of October, 2025

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J.O. OLOLA
JUDGE

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Ms. Kirui Advocate for the Plaintiff
- c) Ms. Nthenge Advocate for the 1st Defendant
- d) No Appearance for the 2nd Defendant
- e) Ms. Gatimu holding brief for Mwanzia Advocate for the 3rd Defendant

f) Mr. Bisanza Advocate for the Intended Interested Party

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