



Power Plant Engineers Limited v Business Partner International (Environment and Land Case 39 of 2016) [2025] KEELC 6827 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6827 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE 39 OF 2016
A OMBWAYO, J
OCTOBER 9, 2025**

BETWEEN
POWER PLANT ENGINEERS LIMITED PLAINTIFF
AND
BUSINESS PARTNER INTERNATIONAL RESPONDENT

RULING

Brief Facts

1. The Plaintiff/Applicant filed the instant application dated 16th July, 2025 seeking the following orders:
 1. Spent.
 2. That the Honourable Court be pleased to cite Cyrus Nderitu Maina, Lina Arunkumar Kantaria and Matthew Alan Cumming being the directors and secretaries of the respondent for Contempt of Court orders dated the 1st October, 2025 extracted from the judgment of even date.
 3. That an order of committal to prison be made against Cyrus Nderitu Maina, Lina Arunkumar Kantaria and Matthew Alan Cumming for such period as this Honourable Court may deem fit and just in that they have blatantly disobeyed the express orders made herein by this Honourable Court.
 4. Any other orders the Court may deem fit in the circumstances.
 5. An order that Costs of and occasioned by this Motion be paid by the Respondents herein.
2. The Application was based on grounds set out and supported by the Affidavit of Jannita Ndila Daudi, the Plaintiff/Applicant's director sworn on 16th July, 2025. She stated that on 1st October, 2019



judgment was delivered in favour of the Applicant after which the Respondent filed an appeal. She further stated that the appeal partially succeeded where the court set aside the order that directed the refund of Kshs. 771,333.90/= to the Applicant. She stated that the Respondent being fully aware of the judgment with specific reference to the order directing it to issue the Applicant with a discharge of charge, has deliberately defied the said orders. She added that the Respondent was served with the decree vide the letters dated 21st January, 2025 and 25th April, 2025 being reminded to comply with the said judgment and decree. She went on to state that despite knowledge of the order for discharge of charge, the Respondent has neglected and or refused to issue the same. She added that the Respondent's actions constituted disobedience of a valid court order whose terms were plain and unambiguous. She stated that the Respondent having deliberately refused to comply with the said orders, it was incumbent upon this court to intervene and cite the named persons for contempt. She stated that the Applicant has since entered into a binding sale agreement for L.R No. Naivasha/ Mwachiringiri Block 5/937 the suit parcel in the proceedings. She also stated that she was unable to complete the transaction and faced imminent risk of being sued by the purchasers. She stated that it was in the interest of justice that the application be allowed so as to protect the rule of law and the sanctity of this court.

Response

3. The Respondent did not file response to the application.

Submissions

4. None of the parties filed submissions.

Analysis and Determination

5. This court has considered the application and the main issue for determination is whether the Respondent should be cited for contempt.
6. Section 29 of the *Environment and Land Court Act* 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”

7. In the case Samuel M. N. Mweru & Others V National Land Commission & 2 Others [2020] eKLR the court 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.
 - a) 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.[46] Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book Contempt in Modern New



Zealand[47] 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."

8. It is not in dispute that this court vide its judgment delivered on 1st October, 2019 found in favour of the Applicant. It is also not in dispute that the Respondent appealed the said decision in Nakuru Civil Appeal No. E001 of 2020 which appeal partially succeeded in terms of prayer a) only on the refund of Kshs. 771,333.90/- to the Applicant. It is this court's view that the rest of the prayers as upheld by the Court of Appeal remained as found by this court and thus parties ought to abide by its terms.
9. The Applicant contends that the Respondent has since failed to discharge the charge in disregard of the court orders. It further contends that it has since entered into a sale agreement thus unable to complete the transaction.
10. It is this court's view that the orders were clear and unambiguous which the Respondent was well aware of. I have also perused the record and it is fact that the decree was served upon the Respondents on 29th April, 2025. It is also not in dispute that the Applicant's claim remained uncontroverted.
11. It is my view that being no rebuttal from the Respondent, and based on the evidence tendered before this court, the only conclusion is that the Respondent has no intention of respecting the subsisting court orders.
12. Consequently, the application dated 16th July, 2025 is hereby allowed in the following terms:
 - a. The Respondent be and is hereby cited for contempt.
 - b. That Notice to Show Cause to issue forthwith for the Respondent's directors to come to court and show cause why they should not purge the contempt or be sentenced.
 - c. Costs in the cause.

Orders accordingly.

SIGNED BY/FOR:

HON. JUSTICE ANTONY O. OMBWAYO

NAKURU ENVIRONMENT AND LAND COURT ENVIRONMENT AND LAND COURT

DATE: 2025-10-09

