



REPUBLIC OF KENYA



**Mabeya v Citadel Real Estate Limited (Commercial Case E201 of 2023)
[2025] KEHC 15588 (KLR) (Commercial and Tax) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15588 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E201 OF 2023
MN MWANGI, J
OCTOBER 31, 2025**

BETWEEN

CONSERAY SEME MABEYA PLAINTIFF

AND

CITADEL REAL ESTATE LIMITED DEFENDANT

RULING

1. The plaintiff filed a Notice of Motion application dated 21st November 2023 pursuant to the provisions of Sections 1A, 1B & 3A of the *Civil Procedure Act*, Section 5(1) of the *Judicature Act* and all other enabling provisions of the law. The plaintiff prays for orders that the defendant be declared to be in contempt of the Court Order issued on 26th September 2023. He also prays for the defendant's corporate veil to be lifted and for its Directors Messrs Said Ismail Mohamed & Mohamed Ismail Mohamed to be held personally liable for contempt, and for them to be directed to purge the contempt by restoring the plaintiff's access to the premises and returning all items listed in the inventory annexed to his affidavit. He also seeks an order for the defendant's Directors to be committed to prison for up to six (6) months for contempt.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Conseray Seme Mabeya, the plaintiff herein. Mr. Mabeya averred that he is a tenant of Shop 4, Tusker House, Nairobi, following a lease he entered into with Guled Housing Company in September 2021, which allowed him to rent the shop at Kshs.150,000/= per month. He contended that after the defendant acquired the premises in November 2022, it sought to increase rent to Kshs.400,000/=, but the parties herein orally agreed to increase the said rent to Kshs.180,000/= but despite the said agreement, the defendant issued a backdated rent demand of Kshs.400,000/= and disconnected power in March 2023, prompting him to file this suit.



3. Mr. Mabeya stated that on 26th September 2023, the Court granted him injunctive reliefs restraining the defendant from interfering with his access to the suit premises and from demanding for rent above Kshs.150,000/= per month, pending determination of the dispute between the parties herein vide arbitration.
4. He averred that despite the said order having been duly served on the defendant's Advocate in November 2023, the defendant's agents broke into the suit premises, removed valuable items and changed the locks, consequently denying him access to the suit premises in blatant disobedience of the Court Order of 26th September 2023. Mr. Mabeya asserted that the defendant's contempt was deliberate and carried out through its Directors, who should be held personally liable.
5. In opposition to the application, the defendant filed a replying affidavit sworn on 28th February 2024 by Mr. Said Ismael Mohamed, a Director of the defendant company. Mr. Mohamed averred that the defendant acquired the suit premises in 2021 and required all tenants to sign new leases, but the plaintiff and some other tenants refused hence they were issued with Notices to terminate their tenancies in accordance with the provisions of the Landlord & Tenant (Shops, Hotels Catering Establishments) Act. He contended that since the plaintiff neither opposed nor complied with the said Notices, the defendant moved to the Business Premises Tribunal (BPRT) vide Nairobi BPRT E793 of 2023 and the BPRT on 27th October 2023 issued eviction orders in favour of the defendant, and the plaintiff was evicted from the suit premises with Police assistance and his goods were stored.
6. Mr. Mohamed stated that the plaintiff later applied to the Tribunal to set aside the eviction and inspect the premises, and an inspection was scheduled for 20th December 2023, where it was confirmed that the suit premises had already been leased to another tenant, making restoration of the plaintiff to the suit premises impossible. Mr. Mohamed averred that the plaintiff failed to disclose to this Court about the BPRT proceedings and the Orders issued therein.
7. He further averred this Court's Orders of 17th October 2023 were never served on the defendant or its officers, but were served on the defendant's former Advocates who did not inform the defendant of its existence. He denied that the defendant ever entered into a lease with the plaintiff and asserted that the lease that the plaintiff relies on was executed by a stranger to the defendant.
8. In a rejoinder, the plaintiff filed a further affidavit sworn on 19th April 2024 by Mr. Conseray Seme Mabeya, the plaintiff herein. He averred that the defendant knowingly moved to the BPRT and obtained ex parte eviction Orders on 27th October 2023, one month after the High Court had issued injunctive reliefs in favour of the plaintiff, without disclosing about the existence of the proceedings before the High Court. He deposed that the BPRT lacked jurisdiction to vary or override the injunctive reliefs that had been issued by the High Court, rendering the BPRT's eviction orders unlawful. He stated that despite institution of contempt proceedings against the defendant, it continues to defy the High Court Orders by keeping the premises locked, denying him access thereto and advertising the suit premises to prospective tenants.
9. The application herein was canvassed by way of written submissions. The plaintiff's submissions were filed on 8th May 2024 by the law firm of TLO Advocates LLP, while the defendant's submissions were filed by the law firm of Kang'ethe Waitere & Company Advocates.
10. Mr. Oduol, learned Counsel for the plaintiff relied on the case of Samuel M. N. Mweru & others v National Land Commission & 2 others [2020] KEHC 9233 (KLR), and submitted that the plaintiff has made out a case for contempt of Court against the defendant. He referred to the Court of Appeal case of Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 others [2018] KECA 359 (KLR), and argued that the Orders issued on 26th September 2023 were clear, unambiguous, left no



doubt as to the defendant's obligations and they were binding on the defendant as the judgment was in personam, therefore enforceable only against the parties to the suit. Counsel cited the case of John Warungu Wanjeru v Family Bank Limited & 5 others [2021] KEHC 6992 (KLR), and contended that if the said Orders were unclear and ambiguous, the defendant ought to have sought clarification and interpretation of the said Orders from the Court.

11. Mr. Oduol relied on the case of Alfred Mutua v Boniface Mwangi [2022] KEHC 2230 (KLR), and stated that personal service is not mandatory where it is shown that the party or their Advocates had knowledge of the Court Order. He stated that having demonstrated that the defendant's Advocates on record were served with the Orders issued by this Court, the defendant cannot now claim not to have had Notice of the existence of the said Order.
12. Counsel cited the case of John Warungu Wanjeru v Family Bank Limited & 5 others [2021] KEHC 6992 (KLR), and submitted that the Directors of the defendant company constitute its directing mind and will, therefore they are presumed to have been aware of the defendant's disobedience of the Court Orders. Counsel further submitted that the defendant's persistent disobedience of three (3) valid Court Orders amounts to improper conduct by its Directors, thus it is in the interest of justice that the instant application be allowed to prevent them from hiding behind the company structure.
13. Ms Waitere, learned Counsel for the defendant submitted that the defendant was never notified of this suit or the Orders issued herein as the alleged service by email did not specify the Advocate served or the address used. She argued that since the Orders of 26th September 2023 were made in its absence and without proper Notice, the defendant's constitutional rights to a fair hearing guaranteed under Article 50(1) of *the Constitution* of Kenya were violated. Counsel contended that after the plaintiff failed to respond to, or oppose the defendant's Notice to terminate their tenancy agreement, the Notice took effect by operation of the law, thus the defendant had every right to move to the BPRT, which issued lawful eviction Orders on 27th October 2023 against the plaintiff, leading to his eviction.
14. Ms Waitere referred to the provisions of Section 15(1) of Landlord & Tenant (Shops, Hotels Catering Establishments) Act and submitted that if at all the plaintiff was dissatisfied with the orders issued against him by the BPRT, he ought to have challenged it before the Environment and Land Court, not by filing fresh proceedings in the High Court. Counsel argued that since there are parallel proceedings being handled and/or determined by the BPRT, this Court is precluded pursuant to the provisions of Section 6 of the *Civil Procedure Act* from hearing this matter. Counsel cited the case of Trusted Society of Human Rights Alliance v Cabinet Secretary for Devolution and Planning & 3 others [2017] KEHC 8755 (KLR), and contended that the defendant cannot be said to be in contempt of Court Orders since its conduct was in compliance with Tribunal Orders and not in deliberate disobedience of the High Court Orders.

Analysis And Determination.

15. I have considered the instant application, 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 made on 26th September 2023;
 - ii. Whether the defendant's Directors should be directed to purge the contempt by restoring the plaintiff's access to the suit premises and by returning all items listed in the inventory annexed to his affidavit;



- iii. Whether the defendant's corporate veil should be lifted and its Directors Messrs Said Ismail Mohamed & Mohamed Ismail Mohamed be held personally liable for contempt of Court; and
- iv. Whether the defendant's Directors should be committed to prison for up to six (6) months for contempt.

Whether the defendant is in contempt of this Court's Orders made on 26th September 2023.

16. This Court derives its jurisdiction to punish for contempt of Court from Section 5 of the *Judicature Act* which states 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 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.

17. The import of the above provisions were considered by the Court of Appeal in the case of Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others [2014] KECA 840 (KLR) as hereunder -

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.”

18. From the provisions of Section 5 of the *Judicature Act* and the above decision, it is evident that both the High Court and the Court of Appeal possess the power to punish parties whose actions undermine the authority of the Court. Therefore, any person against whom an Order is issued by a Court of competent jurisdiction is duty-bound to comply with it unless and until it is varied or set aside, irrespective of whether or not they believe the Order is valid or not. It is trite that Court Orders are never issued in vain, and it is considered illegal to willfully disobey a Court Order. It is now well settled that the test for what amounts to contempt of Court when it comes to disobedience of a Court Order arising from civil proceedings is whether the disobedience was committed deliberately and mala fides.

19. In the 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 that: -

It is an established principle of law that ^[45] 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. ^[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."
20. Although contempt of Court proceedings are civil in nature, the standard of proof required is higher than a balance of probabilities and close to the standard of beyond reasonable doubt. It is an intermediate standard. In this case, the plaintiff asserts that the defendant is in contempt of the Orders of this Court made on 26th September 2023. It is not disputed that the terms of the said Orders were clear and unambiguous. By virtue of being a party to these proceedings, the defendant is bound by any orders, directions, or judgment issued by this Court, whether or not it agrees with them. The defendant in its replying affidavit to the instant application averred that it was never personally served with the said Order, as service had been effected upon its former Advocates on record, who failed to notify it of the existence of the said Orders.
21. The defendant further averred that its actions in evicting the plaintiff from the suit premises were pursuant to eviction orders issued by the BPRIT on 27th October 2023, following the plaintiff's failure to challenge a Notice served upon him, for termination of the lease agreement.
22. It is now well settled through numerous precedents that obedience of Court Orders is mandatory, irrespective of whether the party required to comply considers the Order to be regular or otherwise. In this case, the plaintiff has demonstrated and the defendant does not dispute that its former Advocates on record were duly served with this Court's Order of 26th September 2023 via email on 18th October 2023. To this end, this Court is bound by the Court of Appeal's holding in the case of *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] KECA 945 (KLR), which affirmed that personal service of a Court Order is not a prerequisite for establishing contempt, as service upon a contemnor's Advocates on record is sufficient to constitute proper service. In the said case, the Court of Appeal held as follows-

On the other hand however, this Court has slowly and gradually moved from the position that service of the order along with the penal notice must be personally served on a person before contempt can be proved. This is in line with the dispensations covered under 81.8 (1) (supra).

Kenya's growing jurisprudence right from the High court has reiterated that knowledge of a court order suffices to prove service and dispense with personal service for the purposes of contempt proceedings. For instance, Lenaola J in the case of *Basil Criticos Vs Attorney General and 8 Others* [2012] eKLR pronounced himself as follows:-

"...the law has changed and as it stands today knowledge supersedes personal service.....where a party clearly acts and shows that he had knowledge of a Court Order; the strict requirement that personal service must be proved is rendered unnecessary"



This position has been affirmed by this Court in several other cases including the Wambora case (supra).

23. The Court further held thus –

It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or notice of the existence of the order of the Court forbidding it. The threshold is quite high as it involves possible deprivation of a person's liberty. This standard has not changed since the old celebrated case of *Ex parte Langley* 1879, 13 Ch D. 110 (C.A), where Thesiger L.J stated as follows. at p. 119:

“...the question in each case, and depending upon the particular circumstance of the case, must be, was there or was there not such a notice given to the person who is charged with contempt of Court that you can infer from the facts that he had notice in fact of the order which has been made? And, in a matter of this kind, bearing in mind that the liberty of the subject is to be affected, I think that those who assert that there was such a notice ought to prove it beyond reasonable doubt.”

.....

Would the knowledge of the judgment or order by the advocate of the alleged contemnor suffice for contempt proceedings? We hold the view that it does. This is more so in a case such as this one where the advocate was in Court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in court on instructions of a party, then it behoves him/her to report back to the client all that transpired in court that has a bearing on the client's case.

24. From the facts of this case, I am satisfied that the defendant having acknowledged that its former Advocates on record were duly served with the Order of 26th September 2023, the defendant is deemed to have had sufficient knowledge of the existence of the said Orders. Consequently, the defendant was under a duty to comply with this Court's Orders, irrespective of whether it considered it irregular, especially since the said Orders were made before the BPRT eviction orders were issued.

25. In the circumstances, I am persuaded that the defendant is in contempt of this Court's Orders made on 26th September 2023 and issued on 17th October 2023.

Whether the defendant's Directors should be directed to purge the contempt by restoring the plaintiff's access to the suit premises and by returning all items listed in the inventory attached to his affidavit.

26. From the Court record, when the parties herein appeared before me on 4th March 2024, I directed the defendant to reinstate the plaintiff and restore the status quo as at 26th September 2023, in accordance with the Orders issued by Justice A. Visram. However to date, the defendant has failed to comply with those directions and has instead averred that the suit premises have already been leased to a third party, making restoration of the plaintiff to the said premises impossible.

27. From the foregoing, this Court is persuaded that issuing a further Order directing the defendant's Directors to purge the contempt by reinstating the plaintiff to the suit premises and returning all items listed in the annexed inventory attached to his affidavit would be an exercise in futility. This is because the defendant has on two separate occasions been directed by the Court to do so but has willfully failed to comply with the said Orders and/or directions.



Whether the defendant's corporate veil should be lifted and its Directors Messrs Said Ismail Mohamed & Mohamed Ismail Mohamed held personally liable for contempt of Court.

28. A company is a separate legal entity from its members and shareholders. That position was espoused by the Court in the English case of *Salomon v. Salomon & Co Ltd* [1897] AC 22. The said position is however not cast in stone as there are instances where the corporate veil may be pierced and/or lifted. The *Halsbury's Laws of England* (4th Ed) at para 90 summarizes the principles governing the lifting of a company's corporate veil as follows-

Notwithstanding the effect of a company's incorporation, in some cases the court will 'pierce the corporate veil' in order to enable it to do justice by treating a particular company, for the purpose of the litigation before it, as identical with the person or persons who control that company. This will be done not only where there is fraud or improper conduct but in all cases where the character of the company, or the nature of the persons who control it, is a relevant feature. In such case the court will go behind the mere status of the company as a separate legal entity distinct from its shareholders, and will consider who are the persons, as shareholders or even as agents, directing and controlling the activities of the company. However, where this is not the position, even though an individual's connection with a company may cause a transaction with that company to be subjected to strict scrutiny, the corporate veil will not be pierced.

29. The Court of Appeal in the oft cited case of *Riccatti Business College of East Africa Limited v Kyanzavi Farmers Company Limited* [2016] KECA 763 (KLR), in addressing the issue of piercing the corporate veil held as follows-

The Court may lift the corporate veil in exercising its inherent jurisdiction to do justice and fairness for the ends of justice. This jurisdiction may be exercised only in special circumstances where the Court finds improper conduct, fraud or when a company is a sham, acting as an agent of the shareholders or evading tax revenues.

30. It is not in contest that on 26th September 2023, this Court issued injunctive Orders against the defendant, which the defendant failed to comply with. Subsequently, on 22nd November 2023, Justice A. Visram directed the defendant to reinstate the plaintiff and restore the status quo as at 26th September 2023, but the defendant again disregarded those directions. Thereafter, on 4th March 2024, this Court for the second time directed the defendant to reinstate and restore the status quo as at 26th September 2023 but the defendant again failed to comply with the said Orders,
31. This Court is therefore of the finding that the persistent disobedience of this Court's Orders by the defendant amounts to improper conduct sufficient to warrant this Court to lift the defendant's corporate veil and hold its Directors personally liable for contempt of Court. It is trite law that where a limited liability company is directed to perform a specific act and fails to do so, the consequences of non-compliance will ordinarily attach to the Directors and/or Officers the company, as a company is a legal person that can only act through the direction and control of its Directors and Principal Officers,.
32. I am therefore persuaded that I should lift the corporate veil, which I hereby do, and hold the defendant's Directors Messrs Said Ismail Mohamed & Mohamed Ismail Mohamed personally liable for contempt.
33. The issue of whether or not, and for how long they should be sent to prison as a result of the foregoing is held in abeyance pending mitigation.



34. In the end, I am persuaded that the instant application is merited. As a result, I make the following orders –
- i. The defendant is hereby found to be in contempt of the Court Order made on 26th September 2023;
 - ii. I hereby lift the defendant’s corporate veil and hold its Directors Messrs Said Ismail Mohamed & Mohamed Ismail Mohamed personally liable for contempt of Court;
 - iii. Summons shall issue for the defendant’s Directors Messrs Said Ismail Mohamed Mohamed and Ismail Mohamed to attend Court on a date to be appointed for mitigation and sentencing; and
 - iv. Costs of this application shall be borne by the defendant’s Directors Messrs Said Ismail Mohamed & Mohamed Ismail Mohamed in their personal capacity.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI ON THIS 31ST DAY OF OCTOBER 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:-

Mr. Oduol for the plaintiff/applicant

No appearance for the defendant/respondent

Ms B. Wokabi – Court Assistant.

