



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT (LAND DIVISION) AT
NAIROBI
ELC CASE NO. E087 OF 2023

RIHAL INVESTMENT
LIMITED.....1st APPLICANT

HARJINDER SINGH
RIHAL.....2nd APPLICANT

VERSUS

JASWINDER SINGH
RIHAL.....1st RESPONDENT

MOHINDER K.
RIHAL.....2nd
RESPONDENT

RULING

The Application

1. The Applicants moved this Court by a Notice of Motion dated 27th February 2025 brought under **Order 51 Rule 1 of the Civil Procedure Rules** and all other enabling provisions of the law, seeking the following orders:
 - a) *Spent*
 - b) *THAT a Notice to Show Cause do issue to the Respondents/Contemnors to show cause why they should not be committed to civil jail for their continued disobedience of this Honourable Court's Order issued on 23rd May 2024 by Honorable Justice E.K. Wabwoto.*
 - c) *THAT the Respondents/Contemnors be committed to civil jail for such period as the Honourable Court deems fit for contempt of court.*

d) *THAT the costs of this application be granted.*

e) *THAT this Honourable Court be pleased to issue any other order it deems fit and just in the circumstances.*

2. The Application is supported by the grounds on its face and the Supporting Affidavit of Harjinder Singh Rihal, the 2nd Applicant. The Applicants state that on 23rd May 2024, this Court directed the Respondents to deposit all rental income from Land Reference No. 25407 into a joint interest-earning account in the names of both parties' advocates pending the hearing and determination of the suit. The Applicants contend that the Respondents were duly served with the order and are fully aware of its contents but have failed, neglected, and/or refused to comply with the Court's directive.
3. In the Supporting Affidavit sworn on 27th February 2025, the 2nd Applicant avers that despite clear service and repeated reminders, the Respondents have continued to collect rental income from tenants occupying various premises on the property including the Whisky Shop, Optica, and a hardware shop without depositing the same into the joint account as ordered by the Court.
4. The Applicants further depone that more than seven (7) months have elapsed since issuance of the order, yet the Respondents persist in disobedience. It is asserted that this continued defiance undermines the dignity of the Court and prejudices the Applicants, who stand to suffer irreparable loss unless the Court intervenes by committing the Respondents to civil jail for contempt.

Response of the Respondents

4. The 1st Respondent, Jaswinder Singh Rihal, swore a Replying Affidavit opposing the Application. He avers that he has at all times complied with the Court's orders of 30th April 2024, and that immediately upon issuance of the order his advocates commenced communication with the Applicants'

then advocates, Mohammed Muigai LLP, indicating that rental income for June and July 2024 had been deposited with them and requesting guidance on opening the joint interest-earning account.

5. The Respondent asserts that the said advocates proposed Sidian Bank as the preferred institution, to which his advocates promptly agreed while simultaneously requesting account-opening forms and confirming that they continued to hold rental proceeds in escrow pending the activation of the joint account.
6. The Respondent further states that consistent follow-up correspondences were sent in July, August, and November 2024, notifying the Applicants' then advocates that his legal team was still holding rental income in escrow and was awaiting the required documents to open the joint account in compliance with the Court's directive.
7. He contends that the Applicants subsequently changed their advocates to Conrad Law Advocates LLP on 14th February 2025, and the present Application was filed without acknowledging the ongoing efforts, or the fact that the delay in opening the joint account was allegedly caused by the Applicants' former advocates' failure to supply the requisite forms.
8. The Respondent therefore denies any willful disobedience of the Court's orders, terming the Application misleading and devoid of merit. He asserts that he has shown sufficient cause demonstrating continuous attempts to comply, including depositing rental proceeds into an escrow account managed by his advocates and readiness to transfer the funds either into the joint account or into Court as directed. He urges that the Application be dismissed with costs.

Submissions

Applicants Submissions

9. Through their written submissions dated **8th July 2025**, the Applicants aver that the Court's order of **23rd May 2024**, directing that all rental income from **LR No. 25407** be deposited into a joint interest-earning account in the names of the parties' respective advocates, was clear, unambiguous and binding, and that the Respondents were fully aware of the order yet have continued collecting rent without depositing any funds as directed, thereby deliberately disobeying the Court and undermining its authority.
10. They rely on **Republic v Principal Secretary, Ministry of Defence Ex parte George Kariuki Waithaka, Shimmers Plaza Ltd v National Bank of Kenya Ltd, Teachers Service Commission v KNUT & 2 Others**, and **Econet Wireless Kenya Ltd v Minister for Information & Communication & Another** to reinforce the principle that court orders must be obeyed once made and that deliberate defiance constitutes contempt.
11. From these submissions, the Applicants identify the issues for determination as: whether the order of 23rd May 2024 was clear; whether the Respondents were aware of it; whether they deliberately disobeyed it; and whether they ought to be punished for contempt.

Respondents Submissions

12. Through their written submissions dated **31st July 2025**, the Respondents oppose the application and maintain that they have not willfully disobeyed the Court's order; instead, their advocates repeatedly wrote to the Applicants' former advocates from July 2024, confirmed receipt and escrow of monthly rents, agreed to open the joint account at Sidian Bank, and requested account-opening forms which were never provided, and they remain ready to deposit all escrowed funds into the joint account or into Court as directed.

13. They rely on **Samuel M. N. Mweru & Others v National Land Commission & 2 Others**, emphasising the higher standard of proof required in contempt proceedings and the need to establish clear terms of the order, knowledge, breach, and deliberate or mala fide disobedience. They contend the Applicants have not satisfied these legal requirements and therefore the application should be dismissed with costs.

Issue for Determination

14. Having considered the Application, the Affidavits on record, and the written submissions of both parties, the Court is of the view that one central issue arises for determination, namely:

a) **Whether the Respondents are in contempt of the Court order issued on 23rd May 2024.**

Analysis and Determination

15. Contempt proceedings are **coercive and/or punitive** in nature yet remain essential to the administration of justice, for without obedience to court orders the rule of law cannot prevail.

16. Because of the gravity of the consequences that may flow from a finding of contempt, the standard of proof is higher than the ordinary balance of probabilities, as stated **in Ochino & Another v Okombo & Others** and reaffirmed in **Samuel M. N. Maweu & Others v National Land Commission (2020) eKLR**. In *Maweu*, the Court set out the four elements that must be established: (i) that the terms of the order were clear, unambiguous and binding; (ii) that the citee had knowledge or proper notice of the terms; (iii) that the citee acted in breach of those terms; and (iv) that such breach was wilful and deliberate.

17. As to procedure, the Supreme Court in **Githinga & Others v Kiru Tea Factory Co. Ltd, Petition No. 13 of 2019; (2023) KESC 4 (KLR)**,

underscored that because contempt proceedings are quasi-criminal, the Court must adhere to principles of natural justice, fairness and observance of the right to be heard.

18. The Supreme Court further reiterated that despite the **Contempt of Court Act** having been declared unconstitutional in *Kenya Human Rights Commission v Attorney General & Another (2018) eKLR*, courts retain their power to punish for contempt under **Section 5(1) of the Judicature Act**, exercised alongside their inherent jurisdiction. The Court also emphasised that any procedure adopted must be fair, reasonable and ensure a full opportunity for the alleged contemnor to defend themselves.
19. Bearing these principles in mind, it is common ground that the Court issued an order on 23rd May 2024 directing that all rental income from LR No. 25407 be deposited into a joint interest-earning account in the names of the parties' advocates.
20. It is equally undisputed that the Respondents were aware of that order. The question is whether the Applicants have proved, to the heightened standard required, that the Respondents breached the order and did so willfully and deliberately.
21. The Applicants assert continued rent collection without deposit as evidence of intentional disobedience. In contrast, the Respondents have exhibited consistent correspondence from July, August and November 2024 showing that they deposited rent with their advocates, who held the funds in escrow, and that they repeatedly sought cooperation from the Applicants' former advocates to operationalize the joint account at Sidian Bank.
22. There is nothing on record to show that the Respondents refused to comply; rather, the evidence discloses an attempt at compliance which stalled due to inaction or delay on the Applicants' side in furnishing account-opening documentation.

23. Applying the doctrine in *Maweu* (supra), the Court is not satisfied that the Respondents' conduct amounted to wilful and deliberate disobedience. While rental income was indeed collected, it was not shown to have been appropriated contrary to the order; instead, it was placed in escrow pending activation of the joint account, and the Respondents remain ready to deposit the funds either into that account once opened or directly into Court.
24. In these circumstances, and given the high standard applicable to contempt, the Court finds that the Applicants have not met the threshold necessary to sustain a finding of contempt.

Final Orders

25. In light of the foregoing analysis and having found that the threshold for contempt has not been met, the Court nevertheless reiterates that its orders must be complied with. Accordingly, the Court issues the following orders:
- a) The Applicants' Notice of Motion dated 27th February 2025 is hereby dismissed.
 - b) The parties, through their respective advocates, shall within fourteen (14) days open and operationalize the joint interest-earning account as directed in the Court's order of 23rd May 2024.
 - c) The Respondents shall, within twenty-one (21) days, render a full account of all rental income collected from L.R. No. 25407 from 23rd May 2024 to date, including details of: tenants currently in occupation; amounts collected per tenant per month; and any arrears, adjustments, or vacant units during the period.

- d) The Respondents' advocates shall, within the same twenty-one (21) days, file and serve bank/escrow statements showing all rental deposits held on behalf of the parties.
- e) Immediately upon opening the joint account, all monies currently held in escrow shall be transferred into the joint account without delay.
- f) Any future rental income from the property shall be deposited directly into the joint account, pending further orders of the Court.
- g) Costs shall be in the cause.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **11th day** of **December, 2025.**

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

Mr. Hasham..... for the Applicants

Mr. Koech..... for the Respondents

Philomena W...... Court Assistant