

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL SUIT NO. E068 of 2020

MAJAZAO LIMITED.....PLAINTIFF/APPLICANT

VERSUS

KAPITI INVESTMENTS.....1ST DEFENDANT/RESPONDENT

RULING

1. This ruling determines the Applicant's **Motion dated 1/10/2024**. The Applicant seeks an order holding the Respondent Kapiti Investments in contempt of Court Orders issued on 7/02/2023 and premised on **Order 51 Rule 1** of the **Civil Procedure Act as well as Sections 1A, 1B and 3A** of the Civil Procedure Rules, and the supporting affidavit of Martin Mutisya Muthengi Advocates sworn on an even dated.
2. The Applicant posits that by the said order, the Respondent was ordered to pay the arbitration fees in the sum of Kshs. 220,000/= within 60 days to facilitate the arbitrator to release the award to the parties, which the Respondent has failed to comply with despite numerous correspondence sent to it by the Applicant's Advocates.
3. The Applicant therefore seeks the orders sought in the motion.

4. In response, the Respondent filed a Replying Affidavit sworn by Gilbert Miya, a director of the Respondent on 26/09/2025. It is his depositions that the parties indeed appointed an arbitrator by name Antony Milimu Lubulella-Advocate, to arbitrate on the dispute on ownership of the suit premises which agreement is annexed hereto as “GM-6”.
5. Citing the **Court ruling issued on 7/02/2023**, the Respondent avers that none payment of the arbitrator’s fees is not willful disobedience of the court orders but is from genuine inability to pay which arises from purely lack of resources the company’s only asset was the suit property which has since been taken out of its control following the judgment of the court.
6. Additionally, the Respondent posits that it has no assets or any income stream having never traded beyond the Mavoko project, hence being not willful disobedience of the court orders, it ought not be cited for contempt; adding that being a money decree, the proper recourse is execution proceedings against the Respondent company or statutory remedies under the Insolvency Act, 2015 not contempt proceedings.
7. In the circumstances, the Respondent urges for dismissal of the motion with costs.
8. The Applicant has not filed its submissions as directed by the court on 28/01/2026.

Respondent's Submissions

9. The Respondent's submission are dated 18/10/2025 in which it flags two issues it flags two issues for determination thus;
 - a) *Whether the Respondents failure to pay the arbitrator's fees constitutes contempt of court;*
 - b) *Whether the contempt jurisdiction is the proper means of enforcing an order directing payment of money.*
10. The Respondent submits that enforcement for payments of the fees should be pursued through execution proceedings, not by contempt proceedings citing the cases of **Econet Wireless Kenya Ltd v. Minister for Information Another [2025] and Indian Airports Employees another [AIR 1999 SC 880, 1999(2) SCC**, from which decision it is clear that where an order is purely monetary in nature, and no willful defiance is shown, the appropriate recourse lies in execution not in contempt.
11. Also cited by the Respondent is the case of **Samuel M. N. Wawereu & Others v. National Land Commissions & 2 Others [2020] eKLR and Salomon v. Salomon & Co. Ltd [1897] AC 2.**
12. There is no dispute that the subject of the Applicant's motion is non-payment of a money decree. The question therefore is whether a money decree can be enforced through contempt proceedings. Ordinarily a money decree is enforced through

Civil execution by either attachment of property, garnishee proceedings or civil jail rather than contempt proceedings.

13. **Order 22** deals with execution of decrees and court order, as is the case herein. Additionally **Sections 28-47** of the **Civil Procedure Act** one clear on the modalities of execution of court decrees. The Respondent has submitted that its failure to pay the arbitrators fees is not willful or deliberate in which then the mode of execution preferred by the Applicant – contempt cannot apply.
14. The court in the case of **Indian airports Employees Union (supra)** held that:-

“... In order to amount to Civil contempt, disobedience must be willful. If disobedience is based on the interpretation of court’s order, notification and other relevant documents it does not amount to willful disobedience.”
15. The test for when disobedience of a civil order constitutes contempt is whether the breach was committed deliberately and mala fide. The offence must be committed not by mere disobedience of a court’s order but by the deliberate and intentional violation of the court's dignity repute and or authority as held in the case of **Samuel M. N. Mweru & Others (supra)**.
16. What is at issue is a execution of a money decree. Order 22 of the Civil Procedure Rules applies and the Applicant ought to

have invoked the said provisions for execution of a money decree, not contempt proceedings.

17. Further, it is trite that a company, as is the Respondent here is a corporate body with its own Directors;- the case of **Solomon V. Salomon [supra]** settled the law on the corporate and legal entity of a Limited liability company.
18. The company has a separate legal personality distinct from its directors and shareholders. Liability of the company (as is here) cannot be imposed on the directors or shareholders save in exceptional circumstances and in any event without lifting the veil of its corporation.
19. The court has also considered the Applicant's **motion dated 22/07/2020**. The orders sought thereof are similar to orders sought in the present motion.
20. The Respondent was then ordered to pay the arbitrator's costs in the sum of **Kshs. 220,000/=**. The applicant failed to disclose this material fact to the court when its motion dated 1/10/2025 was filed and argued, resulting to similar orders.
21. This is but an abuse of the court process and waste of precious court time. Nevertheless, the court took liberty to peruse all the proceedings in the case.
22. **It is therefore evident that the orders sought by the Applicant in the motion under review cannot be enforced**

by way of contempt proceedings but by way of civil execution proceedings as aforesated. The motion dated 1/10/2025 is devoid of merit. It is hereby dismissed with no orders on costs due to its special and peculiar circumstances.

Orders accordingly.

Delivered Dated and Signed at Nairobi this 19th day of February, 2026.

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JANET MULWA.

JUDGE