

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MOMBASA**

**ELC LC NO. E080 OF 2025**

**OCEANIC TOWERS LIMITED.....  
PLAINTIFF**

**VERSUS**

**ABDULRAHMAN  
BAHASSAN.....DEFENDANT**

**RULING**

1. By a notice of motion dated 05.11.2025 filed pursuant to Section 5 of the Judicature Act (Cap 8) and Sections 1A, 1B and 3A of the Civil Procedure Act (Cap 21) the plaintiff sought the following orders;

- a) *Spent*
- b) *Spent*
- c) *spent*
- d) *The defendant be summoned to personally attend open court to explain his continued disobedience of this court's orders issued on 15<sup>th</sup> July 2025.*
- e) *The defendant be held in contempt of court for disobeying this court's orders issued on 15<sup>th</sup> July 2025.*
- f) *The defendant be summoned to personally attend open court to show cause why he should not be punished for disobeying this court's orders issued on 15<sup>h</sup> July 2025.*
- g) *The court to impose a just punishment on the defendant for disobeying the court's orders issued on 15<sup>th</sup> July 2025.*
- h) *Costs of the application*

2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Mitesh Amrital Khimchand Visaria on even date. The plaintiff contended that the defendant had violated the terms of the interim injunction granted on 15.07.2025. In particular, it was alleged that despite service of the interim order the defendant had persisted in obstructing the driveway and the lifts to the suit premises. The defendant was said to have used his motor vehicle registration mark and number KCC 2725 for that purpose on 19 October 2025; 28 October 2025; 02 November 2025 and 04 November 2025. The plaintiff relied on photographic and video recordings in support of the application.
3. There is no evidence on record to show that the defendant filed any response to the application. In fact, he has never entered appearance in the proceedings despite service of court process. When the plaintiff's application dated 15.04.2025 first came up for inter partes hearing on 29.09.2025 the court directed that the defendant should be served by affixing copies of the court process on the outer door of the house where he resided. The plaintiff has placed some affidavits of service on record to demonstrate such service.

4. Although the plaintiff sought a multiplicity of orders in its motion dated 05.11.2025. It is clear from the application as a whole and the material on record that the motion is essentially an application for contempt of court against the defendant.
5. Before an alleged contemnor can be found liable for contempt of court, the court must be satisfied that he was made aware of the court order and that he deliberately disobeyed the same without lawful justification or excuse. The issue of contempt of court was considered in the case of the *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] KEHC 9233 (KLR) whereby it was held, *inter alia*, that;

*"40. It is an established principle of law that<sup>[45]</sup> 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.<sup>[46]</sup> Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand*<sup>[47]</sup> 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.*

6. The court has perused the orders made on 15.07.2025 when the plaintiff filed the motion dated 09.07.2025 under certificate of urgency. Order No. 7 states thus; *“That an interim order is hereby granted in terms of order (b) of the notice of motion until the next court appearance”*. However, when one looks at the motion dated 09.07.2025 the orders sought by the plaintiff are all numbered in Arabic numbers 1-5. There is no order which may be termed as order (b). The court also notes that both orders 2 and 3 of the motion have two limbs, that is, 2(a) and (b) and 3(a) and (b) respectively.

7. There is no indication on record to show that the plaintiff formally extracted and served the contents of the said order (b) of the application. The court is of the view that the omission in clearly defining or specifying the order which was granted was committed by the court. However, if the plaintiff had made an effort to extract the order, it would have been

discovered that there was an anomaly which required correction by the court.

8. It is probable that the court intended to grant *Order 2 (b)* of the motion but that was not specified in the order. The plaintiff did not attempt to formally extract the order as granted by the court. The court is thus of the view that the defendant should not be held liable for contempt of an interim order whose terms were not clear and unambiguous.
9. The court is of the view that service of the application and the defective order made on 15.07.2025 would not satisfy the first requirement. The defendant may have been left in dilemma as to whether it was *Order 2 (b)* or *Order 3(b)* which was granted on interim basis. The court is further of the view that it was the duty of the plaintiff to apply for correction of the order and to extract it in its full terms. As a result, the court takes the view that the contempt alleged against the defendant cannot possibly be proved when one of the key ingredients of contempt has not been established.
10. The upshot of the foregoing is that the court finds and holds that the plaintiff has failed to demonstrate the contempt alleged against the defendant to the required standard. As a consequence, the plaintiff's notice of motion dated 05.11.2025 is hereby dismissed with no order as to costs.

Orders accordingly.

**Ruling dated and signed at Mombasa and delivered** virtually via Microsoft Teams on this **19<sup>th</sup> day of February, 2026.**

.....  
**Y. M. ANGIMA**  
**JUDGE**

In the presence of:

Gillian - Court assistant

Mr. Mugambi for the plaintiff

No appearance for the defendant

ORIGINAL