



**Aston Design and Build Limited v Gatete aka Koechler & 4 others (Commercial Case E296 of 2024) [2026] KEHC 2613 (KLR) (Commercial and Tax) (19 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2613 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E296 OF 2024  
JWW MONG'ARE, J  
FEBRUARY 19, 2026**

**BETWEEN**

**ASTON DESIGN AND BUILD LIMITED ..... APPLICANT**

**AND**

**MIRIAM NJERI GATETE AKA MIRIAM NJERI KOECHLER .... RESPONDENT**

**AND**

**DEMIRY LIMITED ..... 1<sup>ST</sup> INTERESTED PARTY**

**WANGA TIMON WANGA ..... 2<sup>ND</sup> INTERESTED PARTY**

**MAVENCRAFT LIMITED ..... 3<sup>RD</sup> INTERESTED PARTY**

**NATIONAL CONSTRUCTION AUTHORITY ..... 4<sup>TH</sup> INTERESTED PARTY**

**RULING**

1. It is common ground that when the Applicant filed the present application seeking interim relief pending arbitration proceedings between the Applicant and the Respondent, the court, on 10<sup>th</sup> April 2024 granted the said order restraining the Respondent from removing or expelling the Applicant and its personnel from the construction site at the property known as LR Kiambu/Municipality Block 111/146 in Runda and from engaging unauthorized persons to perform construction work at the site pending the hearing of the application.
2. The Applicant, through its application dated 7<sup>th</sup> December 2024, now seeks to cite the Respondent for contempt of the court's orders, that sanctions be imposed upon her including committal to civil jail and that the court orders that she should not be heard until she purges the contempt. The application is supported by the affidavit of the Applicant's director, ANDREY LYUBIMOV, sworn on 7<sup>th</sup> December



2024 and opposed by the Respondent through her replying affidavit sworn on 31<sup>st</sup> December 2024. The Applicant has also supplemented her arguments by filing written submissions which together with the other pleadings on record I have considered and I will be making relevant references to the same in my analysis and determination below.

### **Analysis and Determination**

3. From the Applicant's submissions and pleadings, I note that the sole issue that arises for the court's determination is whether the Respondent is guilty of intentional and willful violation of the court's orders and whether the court should impose on her an appropriate sanction for the same.
4. Whereas I am aware that the *Contempt of Court Act* was declared unconstitutional by the court in Kenya Human Rights Commission v Attorney General & another [2018] KEHC 9656 (KLR), I am also cognizant that courts still possess the inherent power to enforce compliance with their lawful orders through sanctions imposed through contempt of court. Section 5(1) of the *Judicature Act* (Chapter 8 of the Laws of Kenya) grants this court power to punish for contempt as follows:

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 subordinate courts.

5. It is trite that once a court issues an order, it binds all and sundry, the mighty and the lowly equally without exception. It is meant to be obeyed and not otherwise and that the ingredients required to be proved for a successful contempt prosecution were set out by the Court of Appeal in *Ochino & another v Okombo & 4 others* [1989] KECA 65 (KLR) where it cited its own decision in *Mwangi Mangondu v Nairobi City Council (Civil Appeal No. 95 of 1988)* where it held that, "[T]he court will only punish as a contempt breach of injunction if satisfied that the terms of the injunction are clear and unambiguous, that the defendant has proper notice of the terms and that breach of the injunction has been proved beyond reasonable doubt." The position on the applicable standard of proof has been affirmed by the Supreme Court which held as follows in *Githiga & 5 others v Kiru Tea Factory Company Ltd* [2023] KESC 41 (KLR):

In enforcing compliance with lawful court orders, the procedures adopted by the court must be fair and reasonable in which full opportunity is given to an alleged contemnor to defend himself or herself. This is because contempt proceedings being quasi-criminal, require a higher standard of proof than in normal civil cases, and one can only be committed to civil jail or penalized on the basis of evidence that leaves no doubt as to the contemnor's culpability.

6. The Applicant deponed that the Respondent was duly served with the order and was represented in court on 24<sup>th</sup> April 2024, where the order was confirmed. That despite the order, the Respondent continued construction work using unauthorized persons, denied the Applicant access to the site and continued construction even after the Arbitrator's order on 22<sup>nd</sup> November 2024 to stop work.
7. In response, the Respondent denies being in contempt of the court's orders and that the Applicant's allegations are unfounded, misleading, and false. The Respondent argues the order had two limbs; not to remove or expel the Applicant and its agents from the site and not to engage unauthorized persons to undertake construction. She claims she has complied with both and that it is the Applicant who voluntarily left the site after the arbitration tribunal ordered the parties to "go their separate ways" and that the individuals on site were authorized professionals registered with the 4<sup>th</sup> Interested Party under a new project number and as such, they are not unknown persons



8. She avers that the arbitral tribunal ordered the termination of the Design and Build Agreement on 12<sup>th</sup> June 2024, that the Respondent was permitted to re-enter the site and continue work under the arbitration's Interlocutory Award dated 11<sup>th</sup> December 2024 and the Arbitrator also noted the need to protect the unfinished building from weather damage, justifying protective works. The Respondent states that the court order did not prohibit all construction; only work by unauthorized persons and that since her team was authorized, no contempt occurred. Further, that the court also did not order the Applicant's reinstatement to the site and the Respondent accuses the Applicant of perjury and attempting to mislead the court. She argues the Applicant comes to court with unclean hands and should not be granted equitable relief.
9. I have gone through the application, the response, the Applicant's submissions and the principles set out by superior courts above. There is no doubt that the court's orders were clear and unambiguous as the Respondent was restrained "...from removing and/or expelling the Applicant and its agents, contractors and /or employees from the construction site and engaging unauthorized persons from undertaking construction works of any nature at the site...". Thus, the order restrained the Respondent from removing/expelling the Applicant and its agents from the site and engaging unauthorized persons to undertake construction. There is also no doubt that the Respondent was served and was aware of the court orders.
10. The question is whether there was willful and blatant breach of these orders by the Respondent to which I answer in the negative for the following reasons. One, I note that the order did not bar all construction at the site, neither did it order the Applicant's reinstatement. I am in agreement with the Respondent's position that the order only barred her from engaging unauthorized persons to undertake the construction. Two, the Applicant's own evidence shows they were already out of the site by December 2023, months before the court order. The Respondent's evidence shows the Applicant's consultants voluntarily withdrew indemnities and left the project and that the Arbitrator's order of 12<sup>th</sup> June 2024 directed the parties to "...terminate the Agreement and go their separate ways." These can only lead me to conclude that the Applicant was not expelled in violation of the order as they had already left, and the arbitration process formalized the separation.
11. Three, the Respondent annexed a Certificate of Compliance from the 4<sup>th</sup> Interested Party showing a newly registered team authorized to work on the site, negating the Applicant's claim of unknown or unauthorized persons on site. Further, the Arbitrator's Interlocutory Award of 11<sup>th</sup> December 2024 permitted the Respondent to re-enter the site and continue work.
12. In the end, I find that the Respondent has provided plausible, documented evidence that she complied with the order and the Applicant's evidence does not disprove that the workers were authorized or that the work was preventative. Given the quasi-criminal nature of contempt proceedings, I find that the evidence does not establish to the required standard degree of proof that the Respondent willfully violated the specific terms of the court order. The Respondent has raised reasonable doubt through her evidence and arguments and I therefore do not find her in contempt.

### **Conclusion and Disposition**

13. In the upshot, the Applicant's application dated 7<sup>th</sup> December 2024 is dismissed with costs being awarded to the Respondent. It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19<sup>TH</sup> DAY OF FEBRUARY 2026**

.....



**J.W.W. MONGARE**

**JUDGE**

In The Presence Of

Ms. Wanjiku Ndegwa for the Plaintiff/Applicant

Mr. Kevin Omwanza for the Respondent

Amos- Court Assistant

