

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CIVIL SUIT NO. E029 OF 2022

NYANDARUA PROGRESSIVE

AGENCY LIMITED.....PLAINTIFF/APPLICANT

VERSUS

PETER MACHARIA NJOROGE.....1ST RESPONDENT/DEFENDANT

STANLEY KABACIA GIKUMA.....2ND RESPONDENT/DEFENDANT

RULING

1. The Applicant moved this Court vide a Notice of Motion dated 22nd April, 2025 and expressed under Sections 3, 3A and 63 of the Civil Procedure Act Cap 21 of the Laws of Kenya and Article 159(2) of the Constitution, seeking for the following Orders;-

1) Spent.

2) That the hearing and determination of this application this Honourable Court be pleased to issue summons for Peter Macharia Njoroge and Stanley Kabacia Gikuma to appear before open court at the earliest time to show cause why they should not be held liable for contempt of the Court Order issued on 6th July, 2023.

3) This Honourable Court be pleased to find that the Respondents are in contempt of the Court order issued on 6th July 2023.

4) This Honourable Court be pleased to Order that the Respondents be committed to civil jail for a period of six (6) months or any other such terms as the Court may decide.

5) *Costs of the Application be provided for.*

6) *Any other orders that meet the ends of justice.*

2. The application is premised on the grounds on the face of the Notice of Motion and the Supporting Affidavit sworn on even date by Eliud Samuel Maina Waweru, one of the directors and the Chairman of the Applicant herein.
3. He stated that the Respondents are former directors of the Applicant company and that on 6th July, 2023, the Court ordered the Respondents to return specific company items and documents to the Applicant's counsel within 14 days.
4. Despite being served with the order and a Penal Notice, the Respondents have refused to deliver the items, which include; the Green Book containing members records of payments, 4 mother head titles namely No. 6289, 9938, 9939, 9942, the company seal, AFC Loan discharge of charge, minutes books, receipts books, Map plan, Company Inventories, office files, Bank Accounts details, ledger books, Omolo register and all other registers, creditors and debtors lists and other company documents. It is stated that the Respondents have wilfully and forcefully resisted the order, eroding the Court's dignity.
5. He contends that continued retention of these documents is illegal, hampers company operations, and allows the Respondents to potentially misuse the company seal for personal gain.
6. In his Affidavit, the Affiant argues that the Respondents are no longer directors and have no right to the documents; therefore, the Court should commit them to civil jail to vindicate its authority and allow the company to function.

7. The Respondents opposed the Application vide the Replying Affidavit sworn on 15th May, 2025 by the 2nd Respondent, Stanley Kabacia Gikuma.
8. The deponent acknowledges the existence of the Court Order dated 6th July, 2023, but raises a Preliminary Objection, asserting that the current application is fatally defective and an abuse of the court process.
9. He argues that the application violates the principle of *sub-judice* because there is a pending appeal, being Civil Appeal No. E112 of 2023, challenging the very ruling the Applicant seeks to enforce.
10. The 2nd Respondent further deposes that they have filed an application for a stay of execution of the 6th July, 2023 Order, which is currently awaiting a hearing date. He contends that the Applicant's motion is a forum shopping attempt intended to overreach the appellate process and embarrass the Respondents.
11. On the merits of the document recovery, he denies being in possession of the specific items listed, claiming they were never served with a proper inventory and that the items are actually held by third parties or were never in their custody.
12. Lastly , he asserts that they have not wilfully disobeyed the court, as the active appeal and stay application provide a lawful basis for the current status quo. In conclusion, he states that the Applicant will suffer no prejudice if the application is dismissed, whereas the Respondents would be unfairly punished for exercising their right of appeal.
13. In a rejoinder through a Supplementary Affidavit sworn on 28th May, 2025 by the Applicant's Director, Eliud Samuel Maina, the deponent

- clarifies that this Affidavit is intended to rebut the misleading claims made in the Respondents' Replying Affidavit.
14. He points out that while the Respondents claim to have appealed, they have failed to provide any evidence of a stay order being granted by either the High Court or the Court of Appeal; therefore, the order of 6th July, 2023, remains valid and enforceable. He dismisses the *sub-judice* argument, stating that a mere Notice of Appeal does not stop the execution of a valid Court Order.
 15. He further deposes that the Respondents' claim of not possessing the documents is a fabrication intended to defeat justice, noting that as former directors, they were the last known custodians of the company's instruments.
 16. He highlights that the Respondents have previously admitted in other proceedings to holding company properties, making their current denial contradictory and in bad faith.
 17. He reiterates that the company's operations are paralysed without the seal and titles, and that the Respondents are using the appellate process as a cloak to shield their contemptuous behaviour.
 18. He concludes by urging the court to uphold its dignity by punishing the contempt, as the Respondents have shown no genuine intention of complying with the law.

Applicant's Submissions

19. The Applicant invites this Court to exercise its inherent power to punish the Respondents for wilfully disobeying the orders issued on 6th July, 2023.

20. The Applicant relies on the Supreme Court decision in **Githiga & 5 others v Kiru Tea Factory Company Ltd (Petition 13 of 2019) [2023] KESC 41 (KLR) (16 June 2023) (Judgment)** to support the court's authority in this matter.
21. The Applicant details that despite a clear ruling directing the Respondents to deliver specific company items including the Green Book, four mother titles LR No. 6289, 9938, 9939, and 9942, and the company seal, within 14 days, the Respondents have remained in defiance.
22. Acknowledging that contempt proceedings are quasi-criminal, the Applicant cites **Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui [2021] eKLR** to establish that the burden lies with the Applicant to prove its case. They further rely on **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR**, which outlines the four essential elements of contempt: clear terms of the order, knowledge of those terms, failure to comply, and deliberate action.
23. While submitting that the Order was clear and unambiguous, the Applicant argues the Respondents had personal knowledge of the order, citing an affidavit of service and the fact that the Respondents were represented when the order was made. The Applicant relies on the case of **Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui** (Supra) where I was held that:-

“Due to the gravity of consequences that ordinarily flow from contempt proceedings, it is proper that the order be served and the person cited for contempt should have had personal knowledge of that order”.

24. The Applicant cites the Supreme Court in **Republic v Ahmad Abolfathi Mohammed & another [2018] eKLR** regarding the high standard of proof required when liberty is at stake. They argue that the Respondents' failure to deliver documents has hampered and punctured the Company's operations, proving their conduct was deliberate.
25. In conclusion, the Applicant submits that all requirements for committal have been met and therefore invokes Section 27 of the Civil Procedure Act and prays for the application to be allowed with costs.

Respondent's Submissions

26. The Respondents oppose the application on the grounds of factual impossibility and lack of evidence. They term the Applicant's allegations as unsubstantiated. They deny being in possession of the Company documents, asserting that the Applicant's directors forcefully and unlawfully seized all company records and property in April 2012 with police assistance.
27. They argue that the threshold for proving contempt has not been met. They rely on the case of **Gatharia K. Mutikika vs Baharini Farm Ltd [1985] KLR 227**, which held:-
- "The breach for which the alleged contemnor is cited must be precisely defined... it must be satisfactorily proved... higher than proof on a balance of probabilities, almost, but not exactly, beyond reasonable doubt".***
28. Further reliance was placed on the case of **Oilfield Movers Ltd v Zahara Oil & Gas Limited [2020] eKLR** to emphasize that the court must be satisfied beyond any shadow of a doubt.

29. Like the Applicant, the Respondents refer to the four elements of civil contempt established in *Cecil Miller v Jackson Njeru & Another [2017] eKLR* and *Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR*.
30. The Respondents contend that the order cannot bind them because it demands the production of items they have not possessed for 12 years. They argue that a court cannot compel the impossible and invoke the maxim *lex non cogit ad impossibilia* that the law does not compel impossibilities.
31. To prove the Applicant already possesses the documents, the Respondents provide evidence of land titles marked as exhibit PNM 1–4 processed by the Applicant between 2015 and 2020. On that note, they argue that it is factually impossible for the Applicant to have issued these titles without the original mother titles and records they now claim are missing.
32. The Respondents submit that the Applicant is acting in bad faith to weaponize contempt proceedings. They seek the dismissal of the application with costs, citing *Republic vs Rosemary Wairimu Munene, Ex-Parte Applicant Vs Ihururu Dairy Farmers Co-operative Society Ltd*, as cited in *Cecilia Karuru Ngayu V Barclays Bank of Kenya [2016] eKLR*, which affirms that costs should follow the event.

Analysis and Determination

33. Upon perusal of the Application, the affidavit in support and in opposition of the Application, and the rival submissions, the main issue for determination herein is whether the Respondents are in contempt of Court Orders.

34. Section 5 of the Judicature Act confers jurisdiction on the superior courts to punish for contempt as it provides 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 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.”

35. Regarding the standard of proof, the Court of Appeal in **Mutitika vs Baharini Farm Ltd [1985] KLR 229, 234**, had this to say:-

“...In our view the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to offence which can be said to be quasi- criminal in nature.”

36. In **Kenya National Union of Teachers & 2 others v Teachers Service Commission [2018] KECA 214 (KLR)**, the Court of Appeal went further and listed four factors a court should consider in contempt of court orders, as captured in the **Mutitika** case: they include;-

- i. Determination of the existence of the order(s) made by a court of competent jurisdiction and which were allegedly transgressed.***
- ii. Identification of the addressee(s) of the order allegedly transgressed.***

- iii. *Determination of whether the orders allegedly transgressed required the addressee(s) to do or to refrain from doing something.*
- iv. *Determination of the addressee's knowledge of both the existence of the orders as well as the requirements in such orders as to what the addressee(s) should or should not do.*

37. In this case, this Court presided over by Chemitei, J issued Orders on 6th July, 2023, directing the Respondents to deliver all the company items pleaded under paragraph 2 of the Notice of Motion dated 27th September, 2022.

38. These Orders were served upon the Respondents' Advocates on 23rd July, 2023, and the 1st and 2nd Respondents were personally served on 26th and 27th July, 2023, respectively. In their Replying Affidavit, they have indeed acknowledged receipt of the Ruling and the Orders of the Court.

39. Having had personal knowledge of the Orders of the Court, it was upon the Respondents to obey the said Orders. Obedience of Court Orders is imperative for the endorsement of judicial authority and dignity. To do otherwise would erode the dignity and authority of the courts. The obligation of an addressee of a court order was explicitly stated by Romer L.J in *Hadkinson versus Hadkinson [1952] ALLER 567* as follows:-

“It is the plain and unqualified obligation of every person against, or in respect of whom an order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. Lord Cottenharm, L.C., said in Chuck

versus Cremer (1) (1 Coop. temp. cott. 342...A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it ... It would be most dangerous to hold that suitors, or their solicitors, could themselves judge whether an order was null or valid – whether it was regular or irregular. That they should come to the Court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the Court that it might be discharged. As long as it existed it must not be disobeyed”.

40. Similarly, in this case, Chemitei, J gave the Respondents 14 days to comply. Having notice of what was required of them, the Respondents ought to have acted accordingly with the Orders of the Court but they have failed to do so.

41. On what action can be taken against such persons that defy Court Orders, the Court of Appeal in *Kenya National Union of Teachers & 2 others v Teachers Service Commission(Supra)*, held that;-

“...it is good practice that upon finding a contemnor culpable for contempt of court orders, he/she should be accorded an opportunity to mitigate before handing down an appropriate penalty against him/her.”

42. In this case, the Respondents admitted they are aware of the Judgement but argued that they are unable to comply since they do not have the said documents. Further, that the matter is before the Court of Appeal and that they are in the process of obtaining a stay of Execution Orders. No

evidence was, however, tendered in support of the said allegations of stay Orders.

43. Further, a mere alleged Notice of Appeal not yet acted on cannot support their argument on sub judice. The Order herein has never been set aside or varied by any Court. It thus follows that the Respondents' actions of failing to comply with the said Court's Orders amount to contempt of Court Orders.
44. Accordingly, this Court finds the Applicant's Notice of Motion dated 22nd April, 2025, with merit and the same is allowed.
45. The Respondents are hereby ordered to appear before this Court urgently to show cause why they should not be committed to civil jail for the said contempt of Court Orders issued on 6th July, 2023.

Dated, signed and delivered at Nakuru this 25th Day of February, 2026.

PATRICIA GICHOHI

JUDGE

In the presence of :-

Mr. Amuyunza for the Applicant

Ms Oseko for Mr. Kahiga for the Respondents

Erickson , Court Assistant

ORIGINAL