



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

MILIMANI LAW COURTS

ELC CASE NO E080 OF 2023

JONCO COMPANY

LIMITED.....PLAINTIFF

VERSUS

FRANCIS THUO NJOROGE.....1ST

DEFENDANT

MAHAD ADAN.....2ND

DEFENDANT

MOHAMED.....3RD

DEFENDANT

ABDULRAHMAN MOAHMED.....4TH

DEFENDANT

ISKAASHATO LIMITED.....5TH

DEFENDANT

THE LAND REGISTRAR, NAIROBI LAND

REGISTRY.....

.....6TH DEFENDANT

THE CHIEF LAND REGISTRAR.....7TH

DEFENDANT

THE ATTORNEY GENERAL.....8TH

DEFENDANT

RULING

1. This application related to **LR NO 36/VIII/423** now converted into **NAIROBI/BLOCK/49/243** hereinafter referred to as the suit property. The applicant vide notice of motion application dated **12th May 2025** seeks the following orders;

i. Spent

ii. THAT this honourable court be pleased to conduct a site visit of the property subject to this suit

- iii. That summons be issued against ABDIRIZAK ORE AHMED, ABDIWAHAB MOHAMED HUSSEIN, ADAN MOHAMED ELMI, MAHAD ADAN ABDULLAHI, the directors of the 5th Respondent herein to appear before court and show cause why they should not be committed to civil jail for such term as the court may deem just.**
- iv. THAT ABDIRIZAK ORE AHMED, ABDIWAHAB MOHAMED HUSSEIN, ADAN MOHAMED ELMI, MAHAD ADAN ABDULLAHI, the directors of the 5th Respondent herein be cited for contempt of court and be committed to civil jail for a term of six(6) months for failing to comply with the orders of this honourable court issued on 29th January 2024.**
- v. THAT warrants of arrest be issued to ABDIRIZAK ORE AHMED, ABDIWAHAB MOHAMED HUSSEIN, ADAN MOHAMED ELMI, MAHAD ADAN ABDULLAHI, the directors of the 5th Respondent herein**
- vi. THAT the OCS Eastleigh North Police station or the officer in charge of the nearest Police station be**

directed to ensure compliance with the orders of this honourable court issued on 15th January 2024.

vii. THAT the 5th defendant be denied this honourable court's audience until it purges contempt

viii. Any other relief as the court may deem fit and just to grant

ix. Costs of the application

2. The Applicant contends that the directors of the 5th defendant have disregarded court orders issued on the 29th January 2024. That they are in breach of the orders restraining construction activities on the suit property. In the affidavit sworn by one Mohamed Maalim affidavit he indicates that the Plaintiff is the legally registered owner of the suit property and that the Plaintiff in a bid to protect the suit property from trespass by the Defendants filed this suit subsequent to which orders were issued by the court.

3. The 5th Respondent in opposition filed a replying affidavit sworn by Abdiwahab Mohamed Hussein the director of the 5th Defendant. He insists that the 5th Respondent are the

rightful owners of the suit property and are currently in possession of the same.

4. He avers that the assertion that the 5th Respondent is still constructing on the suit property is false. That at the time of the orders, the 5th Respondent had constructed up to 1st floor and since then no other construction has happened. He stated that the photographic evidence given by the Applicants do not depict the time and location where the photos were taken.
5. Counsel for the Applicants submitted that the 5th Respondent had wilfully disobeyed the court orders hence the court should lift the corporate veil and punish the Directors herein. On the other hand counsel for the Respondents argued that Applicants had not met the standard of proof for contempt. Counsel further argued that the Applicants had not complied with **Section 106B of the Evidence Act** on production of photographic evidence.
6. The sole issue for determination by the court is whether the Directors of the 5th Defendant Company should be found in contempt of the court orders issued on 29th January 2024.

Contempt of Court is provided for under Section 5 of the Judicature Act as follows: -

“(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 the subordinate courts.”

7. Additionally, **Section 29 of the Environment and Land Court Act** provides as follows;

“Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.”

8. In order for one to be found to be in Contempt of Court, it must be established that the Court order was valid; that the

same was brought to the alleged contemnor's attention and the alleged contemnor made some deliberate step to breach the same. This was the holding in the case of **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR**, wherein the Learned Judge held,

“38. The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed ‘deliberately and mala fide.’[40] A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe he/she is entitled to act in the way claimed to constitute the contempt. In such a case good faith avoids the infraction.[41] Even a refusal to comply that is objectively unreasonable may be bona fide (though unreasonableness could evidence lack of good faith).[42]

39. These requirements - that is the refusal to obey should be both willful and mala fides, and that unreasonable non-compliance, provided it is bona

fide, does not constitute contempt - accord with the broader definition of the crime, of which non-compliance with civil orders is a manifestation. They show that the offence is committed not by mere disregard of a court order, but by the deliberate and intentional violation of the court's dignity, repute or authority that this evinces.[43] Honest belief that non-compliance is justified or proper is incompatible with that intent."

9. In the case of a company the Directors can be held liable once it is established that they knew of the order and deliberately failed to comply with the same despite having capacity to comply.

10. In the instant case, there was a valid court order. The court Ruling on 29th January 2024 was as follows.... ***"That the honourable court hereby do review its orders issued on 15th January 2024 and in particular Order 2 thereof to the effect that there shall be no eviction of the 6th Defendant from the suit property pending hearing and determination of the suit."***

Paragraph iii reads;

(iii) There shall be no further construction or development by either party or any construction currently ongoing shall cease forthwith.

11. Knowledge of the order is not seriously disputed. The contest is on whether there is breach of the order with the Respondent arguing they have not carried out any construction while the Applicants insist they have continued to carry out the construction. The contestation relates to whether the construction alleged by the Applicant occurred after the issuance of the said orders.
12. The photographic evidence which would have provided useful guidance to the court offers no assistance as there was no compliance with Section 106B of the Evidence Act on the production of electronic evidence. Attempts by the Applicants to date the photographs after the issue of the certificate was raised make it unsafe for the court to rely on the photos.
13. In the circumstances, and applying the higher standard of proof required in contempt proceedings, the Court is

unable to find that contempt has been proved to the requisite standard.

14. However, the Court is seized of a substantive dispute concerning the suit property, and interim orders restraining construction remain in force. The Court must ensure that its authority is preserved and that its eventual determination is not rendered nugatory through acts of construction in disobedience to the court orders. The court finds it necessary to issue orders that will ensure that the status quo is clarified and is maintained at its current status so that the matter proceeds for hearing without further delays.

15. The court issues the following orders;

a. The status quo obtaining on the suit property as at the date of this ruling shall be maintained pending the hearing and determination of the suit.

b. The County Surveyor shall, within thirty days of this ruling, visit the suit property and file a report in Court stating the nature, extent, and

stage of construction presently on the land, together with dated photographs.

c. The Deputy Registrar shall place the report on the court file. The report shall constitute the baseline reference for purposes of compliance with the Court's orders.

d. No further construction, excavation, delivery of building materials, or placement of machinery shall take place on the suit property pending the hearing and determination of the suit.

e. Costs shall abide the outcome of the suit.

Dated, Signed and Delivered virtually at Kajiado this 29th day of January 2026.

JUDY OMANGE

JUDGE.

IN THE PRESENCE OF:

Mr. Wanjohi for Kamau for Interested Party.

Mr. Muchoki for 5th Defendant.

Mrs. Kariuki for Plaintiff.

N/A for 1st, 2nd, 3rd, 4th, 6th Defendants.