

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
ELC CASE NO. 106 OF 2021

RUKIYA AHMED HASSANALI NOORBHAI PLAINTIFF/APPLICANT

VERSUS

ZAIN AHMED HASSANALI NOORBHAI DEFENDANT/RESPONDENT

RULING

1. By the Notice of Motion dated 26th March 2025, Rukiya Ahmed Hassanali Noorbhai (the Plaintiff/Applicant) prays for orders as follows;

a) Spent;

b) That the Respondent Zain Ahmed Hassanali Noorbhai, by himself/agents/employees be and are hereby cited for contempt of the order issued on the 11th December 2024 and be committed to civil prison for such period as this Honourable Court may deem fit and just. In that the said Zain Ahmed Hassanali Noorbhai have jointly and severally by herself disobeyed the orders made herein by this Honourable Court on the 11th December 2024;

- c) That the Honourable Court do proceed and issue orders to commit the contemnor to civil jail for a period of six (6) months;**
- d) That the Honourable Court be pleased to order the Respondent to give account for all the rent collected by him for the past twenty-four (24) years;**
- e) That the Honourable Court be pleased to order that the rent collected from the premises known as MSA/Block XII be placed in an escrow account pending the hearing and determination of the Appeal; and**
- f) That an order (do issue) that the costs of these contempt proceedings be borne by the said Zain Ahmed Hassanali Noorbhai.**

2. The application is supported by an Affidavit sworn by the Plaintiff and is premised on the grounds;

- i. That the Defendant being aware of the order given on the 11th December 2024 has shown**

disdain and is likely to bring disrepute to this Honourable Court.

- ii. That the Defendant despite having been a party and even after being served with the Court's Order has acted with disdain by continuing to vandalize the premises and misappropriating the rent collections;**
- iii. The Plaintiff have no other way of enforcing the said order; and**
- iv. That the Defendant's action are in total violation of the Court order issued on the 11th December 2024 which should only be enforced forthwith.**

3. Zain Ahmed Hassanali Noorbhai (the Defendant) is opposed to the application. In his Replying Affidavit sworn on 7th May 2025, the Defendant avers that the Court in its judgment of 6th November 2023 had ordered that the suit property continue to be held in the joint names of the Plaintiff and the Defendant as joint owners in common and as trustees for their siblings.

4. The Defendant avers that the only order that was stayed was for the appointment of a Professional Management Firm to collect rent and asserts that the Plaintiff has not demonstrated what was not complied with in regard to the orders issued on 11th December 2024. It is further the Defendant's position that the judgment issued by the Court is yet to be enforced as the same has been stayed.
5. I have carefully perused and considered the application as well as the response thereto. I have similarly perused and considered the submissions placed before the Court by the Learned Advocates representing the parties.
6. By the application before the Court, the Plaintiff prays for orders to have the Defendant cited for contempt accusing the Defendant of having disobeyed orders issued herein on 11th December 2024. In addition, the Plaintiff prays for orders that the Defendant does render accounts for all rent collected from the suit premises for the past 24 years. Ultimately, the Plaintiff has urged the Court to issue an order directing that all the rent collected be placed in an escrow

account pending the determination of an appeal which is to be filed before the Court of Appeal.

7. The Defendant is opposed to the application. According to the Defendant, the Plaintiff has not shown or demonstrated how the Defendant has failed to comply with the said orders.
8. Black's Law Dictionary, 11th Edition defines contempt of Court as;

“Conduct that defies the authority or dignity of a Court or legislature. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”

9. Section 29 of the Environment and Land Court Act gives this Court power to punish for contempt and 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.”

10. As Mativo J, (as he then was) stated in the case of ***Samuel M. N. Mweru & Others -vs- National Land Commission & 2 others (2020) eKLR:***

“It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove;

- a) The terms of the order;**
- b) Knowledge of these terms by the Respondent; and**
- c) Failure by the Respondent to comply with the terms of the order.”**

11. Arising from the foregoing, it was apparent to me that in order to determine whether or not there was contempt of the Court Orders, this Court must first establish the nature of the orders issued by the Court on the said 11th of December 2024. From a perusal of the record, it is apparent that on 6th November 2023, the Honorable Justice L. Naikuni, then seized of this matter, had delivered a judgment dismissing the Plaintiff’s suit. The Court went on to issue orders that the suit property continue to be held in the joint names of the Plaintiff and Defendant as joint owners in common and as

Trustees for their siblings. In addition, the Court ordered that both the Plaintiff and the Defendant do appoint a management firm to commence collection of rent and to distribute the same equally amongst the beneficiaries of the suit property.

12. As it turned out, the Plaintiff was dissatisfied with the said judgment and sought to appeal the same to the Court of Appeal. Subsequently and by a Notice of Motion application dated 4th December 2023, the Plaintiff sought for an order of stay of execution of the judgment and the decree issued on 6th November 2023 pending the hearing and determination of the application inter-partes. In addition, the Plaintiff sought for leave to be granted to enable her file the Notice of Appeal out of time and for an order that the draft Notice of Appeal filed with the application be deemed to be duly filed upon payment of the requisite fees.
13. Having heard the parties and in a Ruling rendered on the said 11th day of December 2024, the Learned Judge allowed the application “subject to the fulfilment of the pre-conditions stated therein” as follows;

- b) That this Honorable Court do hereby issue an order to stay the execution of its decree arising from the judgment of this Honorable (Court) delivered on 6th November 2023 pending the hearing and determination of the Intended Appeal in the Court of Appeal.**
- c) That an order be and is hereby made granting the applicant (leave) to file their Notice of Appeal out of time.**
- d) That the draft Notice of Appeal filed herein be deemed as duly filed upon payment of the requisite Court fees /charges.**
- e) That there shall be no order as to costs.**

14. According to the Plaintiff it is those orders that the Defendant had violated by “acting with disdain and continuing to vandalize the premises and to misappropriate the rent collections”. Unfortunately for the Plaintiff, I did not share those views. My reading of the orders issued by the Honorable Justice L. Naikuni on 11th December 2024 was that they had the effect of freezing any orders that may have

been granted in favour of the Plaintiff in the judgment delivered on 6th November 2023. The effect thereof was that the status quo obtaining before the delivery of the judgment was to prevail. That being the case and given that the Plaintiff's suit had been dismissed, there was no longer any order in place requiring the appointment of a professional firm to collect rent and distribute the same to all beneficiaries of the suit property.

15. As was held by the Court of appeal in ***Michael Sistu Mwaura Kamau -vs- Director of Public Prosecution & 4 Others (2018) KECA 359 (KLR)***:

“It is trite that to commit a person for contempt of Court, the Court must be satisfied that he has willfully and deliberately disobeyed a Court Order that he was aware of..... Secondly, ... to sustain committal for contempt of Court, the order of the Court that is alleged to have been deliberately disobeyed must be clear and precise so as to leave no doubt as to what a party was supposed to do or to refrain from doing. Lastly, the standard of proof in committal proceedings is higher than proof on a balance of probabilities,

though not as high as proof beyond reasonable doubt.”

16. In the matter herein, the Plaintiff has not demonstrated that any vandalism was occasioned to the suit premises by the Defendant and how the Defendant has disobeyed the stay of execution orders in place. The orders issued on 11th December 2024 as we have found out merely stayed the judgment and did not grant any benefits to the Plaintiff other than what she had prior to the filing of the suit.
17. The other issue raised by the Plaintiff was a plea that the Defendant renders an account for the rent collected for the past 24 years. From a perusal of the judgment delivered on 6th November 2023, it was apparent that the issue of rent was the subject of the trial and that the Court had fully pronounced itself on the same when it rendered judgment directing that a professional rent collecting management firm be appointed by both parties. While those orders were subsequently stayed, it was clear to me that this Court was now *functus officio* having fully pronounced itself on the matter. It is therefore not proper for the Plaintiff to try and

re-argue the same issues through an application of this nature.

18. In the premises, I was not persuaded that there was any merit in the Plaintiff's Motion dated 26th March 2025. I dismiss the same with costs to the Defendant.

19. It is so ordered.

Ruling dated, signed and delivered in open court and virtually at Mombasa this 23rd day of April, 2026.

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J.O. OLOLA
JUDGE

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Mr. Lianza Advocate for the Plaintiff/ Applicant
- c) Mr. Hassan Advocate for the Defendant/ Respondent