

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL AND TAX DIVISION
COMM. CASE NO. E433 OF 2024

BETWEEN

SMILES AND GRINS LLP.....1ST
PLAINTIFF
BRIAN WAMATHAI KAMARA.....2ND
PLAINTIFF

AND

SMILES AND GRINS DENTAL LLP.....1ST
DEFENDANT
TERESIA WANGARI KANGETHE.....2ND
DEFENDANT
JACINTA WAMUYU KANGETHE.....3RD
DEFENDANT
MICHAEL NG'ANG'A KANGETHE.....4TH
DEFENDANT
REGISTRAR OF COMPANIES.....5TH
DEFENDANT

RULING

Introduction and Background

1. By the court's ruling of 13th June 2025, the Defendants were found guilty of contempt of the court's orders of 13th August 2024 and that they were to show cause within 30 days of the ruling, why they should not be punished by being committed to civil jail. The Defendants were also directed to render accounts to the Plaintiffs detailing all operations, income, expenses, liabilities and assets of the 1st Plaintiff("Smiles & Grins LLP") and the 1st Defendant("Smile & Grins Dental") pending the hearing and determination of the suit.
2. The parties have filed various responses to the said Show Cause Notice by the court that I have considered and I will be making references to them in my analysis and determination below.

Analysis and determination

3. That the Defendants were found guilty of contempt of court is not in doubt and the only issue before me, after taking their mitigation is to determine whether I should commit them to civil jail (see **Nduva & 3 others v Ndar & 3 others; Ng'ang'a (Intended Interested Party) (Civil Case 24 of 2017) [2025] KEHC 3876 (KLR)**). The 2nd Defendant avers that from the point of receiving the court orders, she ceased operating Smiles & Grins LLP and that Smiles & Grins Dental has never been in operation and has no

assets. That she has made attempts to purge the contempt and has been cooperative, imploring the court not to impose punishment against her. She states that she has rendered accounts by producing partnership records and audit reports for the years 2023 and 2024, that she has ceased operations and sent SMS messages to prospective clients and employees about the closure. Further, that she has issued an official Notice of Business Closure effective 1st December 2024 and initiated her removal as a director with the Kenya Medical Practitioners and Dentists Council. She has also requested facility closure to enable her register a new practice and she claims she could not access the partnership's funds as of December 2024, which hindered operations.

4. The 2nd Defendant depones that the 2nd Plaintiff could not contribute to rental arrears, so she cleared the arrears using her personal funds and she was also constrained to pay employee salaries from her personal funds. She further avers that the Registrar of Companies indicated regulations are not yet in place to close this type of LLP. As such, the 2nd Defendant urges the court to consider the measures she has undertaken to purge the contempt and not to render any punishment against her.

5. On their part, the 3rd and 4th Defendants depone that they are not in the medical field and that only the 2nd Defendant is a dentist. They claim that since the court orders were issued, they have not been to the premises of Smiles & Grins LLP and that the 3rd Defendant acted only as a legal consultant to Smiles & Grins LLP prior to the court orders. They believe they were included in this suit out of malice by the 2nd Defendant.
6. On actions taken to comply with the court's orders, they aver that Notices were sent to staff and patients that Smiles & Grins LLP was being shut down and they also assert that the Plaintiffs have not proven passing off and no proof has been provided beyond reasonable doubt that the 3rd and 4th Defendants operated Smiles & Grins LLP or are in contempt. That under **Order 1 Rule 3 and Rule 10(2)** of the **Civil Procedure Rules**, only necessary parties should be enjoined and since the 3rd and 4th Defendants have no involvement in the operations of Smiles & Grins LLP, they are unnecessary parties. That finding them in contempt would defeat the objectives of justice, as the real issues are only between the Plaintiffs and the 2nd Defendant.
7. The 3rd Defendant disputes the 2nd Plaintiff's claim of being the managing partner who was ousted and that the only recollection

she has of interacting with him was when he spent partnership funds at a leisure bar, forcing the 2nd Defendant to take measures to protect the business. She asserts that the 2nd Plaintiff never supported the running of Smiles & Grins LLP and in summary urges the Court not to commit them to civil jail and they seeks costs from the 2nd Plaintiff as no proof of contempt has been provided.

8. On their part, the Plaintiffs contend that despite the court orders, patients have continued to receive services from Smiles & Grins Dental and that payments have been made to the 2nd Defendant. That the Defendants previously used Till Number 9****19 registered under Smiles & Grins LLP but they subsequently changed to Till Number 9****73 registered under the 2nd Defendant's personal name. The Plaintiffs argue this change was calculated to conceal and sanitize their continued contempt by diverting payments away from the restrained business name.
9. The Plaintiffs claim that the Defendants have continued to advertise dental services under Smiles & Grins LLP on social media as evidenced by *Instagram* posts on 10th May 2025 and 7th August 2025 and a *Facebook* job advertisement for a "Dental Receptionist & Social Media Marketing Assistant" posted on 27th May 2025 at

the same location, *Feruzi Towers*, Kiambu Road. That the 2nd Defendant remains an administrator of the *Facebook* page with full control over its content as evidenced by a screenshot of page managers as of 17th November 2025 and that the Smiles and Grins Dental and the 2nd Defendant have caused the registration of *Dental Wellness LLP* and that its CR12 lists Smiles & Grins Dental as a partner alongside the 2nd Defendant. The Plaintiffs argue this is a further act of contempt operating through the same restrained entity under a new name to defeat the court's authority.

10. The Plaintiffs further claims that the Defendants have failed to render accounts as ordered by the court and that the purported accounts annexed to the 2nd Defendant's affidavit are criticized as neither signed nor verified by any partner, not certified by a qualified accountant and not supported by any corresponding bank statements or financial records. The Plaintiff's also opposed the 3rd Defendant's deposition stating that she swore the affidavit on behalf of herself, Smiles & Grins Dental and the 4th Defendant yet she appeared in court as counsel for the other Defendants while also being a party herself and that the court previously reprimanded her and directed her to seek alternative representation, yet she disregarded this. That she has no written

authority to swear an affidavit on behalf of Smiles & Grins Dental and the 4th Defendant and the Plaintiffs urge the court to strike out her deposition entirely.

11. The Plaintiff contends that the 2nd Defendant's claim that she ceased operations is false as the *Facebook* job advertisement and patient receipts prove otherwise, that the alleged "Business Closure Notice" is disputed Smiles & Grins LLP had no employee by that name and her claim that she is no longer a *Facebook* administrator is disingenuous as evidence shows she remains an administrator. For these reasons, the Plaintiffs beseech the court to find the Defendants jointly and severally in continued contempt of the court's orders and commit them to civil jail and impose such fines as the court may deem fit until they purge the contempt in full.

12. I have gone through the above rival positions by the parties and I note that while the 2nd Defendant detailed steps she claims to have taken to purge the contempt, the Plaintiffs have produced compelling, specific, and contemporaneous evidence that directly contradicts her claims and demonstrates continuing and flagrant disobedience of the court's orders.

13. This court (Mugambi J.,) in **Law Society of Kenya & 3 others v Inspector General of Police & 4 others**

[2024] KEHC 10995 (KLR) cited the Supreme Court of India's decision in ***Pravin C. Shah vs K.A. Mohd. Ali & Anr* AIR 2001 SUPREME COURT 3041** where the meaning of the purging process was explained:

...Purging is a process by which an undesirable element is expelled either from one's own self or from a society. It is a cleansing process. Purge is a word which acquired implications first in theological connotations. In the case of a sin, purging of such sin is made through the expression of sincere remorse coupled with doing the penance required. In the case of a guilt, purging means to get himself cleared of the guilt. The concept of purgatory was evolved from the word purge, which is a state of suffering after this life in which those souls, who depart this life with their deadly sins, are purified and rendered fit to enter into heaven where nothing defiled enters...."

14. The court even went further to observe that merely serving a sentence for contempt of court is not enough to vindicate the authority of the court and that the best outcome is when the contemnor demonstrates a genuine remorse and seeks the court's pardon. As such, Purging contempt requires more than simply

claiming to have complied as a contemnor must fully obey the court's orders, demonstrate genuine remorse and an intention to comply going forward and not engage in further contemptuous conduct.

15. In this case, there is lack of evidence of genuine and complete compliance. It is clear from the Plaintiff's depositions that the business has continued to operate even after the 13th June 2025 ruling that found the Defendants guilty of contempt. On 28th June 2025, Patient GWG received orthodontic retainers from Smiles & Grins LLP and paid Kshs.2,000.00 and an official stamped receipt was issued. On 6th August 2025, Patient MN received two dental X-rays from Smiles & Grins LLP and paid Kshs. 4,000.00 by way of M-PESA and an official stamped receipt issued. There are active *Instagram* posts advertising dental services under Smiles & Grins LLP dated 10th May and 7th August 2025, a *Facebook* job advertisement for a "Dental Receptionist & Social Media Marketing Assistant" at *Feruzi Towers* which is the same location that Smiles & Grins LLP operates and that as at 17th November 2025, the 2nd Defendant is still listed as an administrator of the *Facebook* page with express full control.

16. In my view, the above are not minor technical breaches but show actual patient treatment, issuance of official receipts using the restrained business name, active hiring, and ongoing marketing which are all in direct violation of the 13th August 2024 and 13th June 2025 orders. The Plaintiffs have also adduced evidence that the Defendants changed their payment Till number from 95****9 registered under Smiles & Grins LLP to 92****3 registered under the 2nd Defendant's personal name. This strongly suggests a calculated attempt to conceal continued trading from the court, divert payments away from the restrained entity to avoid detection and continue operating while claiming to have allegedly ceased. This is not conduct consistent with a genuine effort to purge contempt.

17. The Plaintiffs further annexed the CR12 for *Dental Wellness LLP* registered on 26th March 2025 and lists Smiles & Grins Dental as a partner and the 2nd Defendant as a partner/manager. The Plaintiffs argue, and I find this compelling, that this is an attempt to circumvent the court's orders by continuing the same dental business under a new name while keeping the restrained entity as a partner. The timing, which is during the pendency of the contempt proceedings and the structure strongly support the

Plaintiffs' claim. Further, the court ordered the Defendants to render accounts and the 2nd Defendant annexed an audit report, but the Plaintiffs raise valid objections that the accounts are not signed or verified by any partner, they are not certified by a qualified, identifiable accountant and I note that the auditor is named but the report lacks a signature or date of approval on key pages and that they are unsupported by bank statements or primary financial records. Given the evidence of continued operation, the accounts are almost certainly incomplete and do not reflect the income after the court's orders of 13th June 2025 which is a further breach and I find that the financial reports annexed are not proper.

18. I have also gone through the 3rd Defendant's deposition and note that she and the other Defendants she purportedly represents have not yet come to terms with the reality that the court has already found them in contempt of the court's orders. Their averments demonstrates a disregard for court procedure and authority that is consistent with a pattern of insubordination and there is no genuine remorse or a desire to purge contempt.

Conclusion and Disposition

19. In sum, the conclusion I have arrived at, after careful consideration of the matter, is that the Defendants have failed to sufficiently explain or purge their contempt and they must be punished for their continued disobedience of the court's orders. Consequently, I hereby sentence the 2nd, 3rd and 4th Defendants to each pay a fine in the sum of Kshs. 100,000.00, which should be paid within a period of 30 days from the date of this ruling, failing which they shall be committed to civil jail for a period of six months.

**DATED SIGNED AND DELIVERED virtually at NAIROBI this
8th DAY of MAY 2026**

.....
J.W.W. MONGARE
JUDGE

IN THE PRESENCE OF

1. Ms. Chitechi for the Plaintiff/Applicant
2. Mr. Kiiru for the 1st, 3rd & 4th Defendants/Respondents
3. N/A for the 5th Respondent
4. Amos- Court Assistant