



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MALINDI**  
**ELC CIVIL CASE NO. 38 OF 2011**  
**BRUNELLA PANINI & 66 OTHERS.....PLAINTIFFS**

**VERSUS**

- 1. POLICINO OASIS MANAGEMENT LIMITED**
- 2. POLICINO OASIS LIMITED**
- 3. GIOVANNI DE CARO**
- 4. POLICINO COSIMO**
- 5. THOMAS HINZANO NGONYO.....DEFENDANTS**

**AND**

- 1. CLAUDIA ZANONI**
- 2. BELLUOMINI GIULIANA**
- 3. MARIA PETRINO**
- 4. GIANNA ELISA RECCOSTA**
- 5. ALESSANDRO CAZZANTI**
- 6. MARIELLA PALAZZICLAUDIOCLAUDIO BONE**
- 7. VIGNAROLI VITTORINO**
- 8. VIRGNAROLI VITTORINO**
- 9. LUIGI ARCARI.....INTERESTED PARTIES/APPLICANTS**

**R U L I N G**

**Introduction:**

1. What is before me is the Application dated 5<sup>th</sup> March 2015 by the 4<sup>th</sup> Interested Party. In the Application, the 4<sup>th</sup> Interested Party is seeking for the following orders:

**That an order of committal be made against Brunella Panini, Maurizio Turato and Paola Ippolito to prison for such period as this Honourable Court may deem fit and just in that they, the said Brunella Panini, Maurizio Turato and Paola Ippolito, have disobeyed the order made herein by this Honourable Court on the 9<sup>th</sup> July 2013.**

**The Applicant's case:**

2. The Application is premised on the ground that on their own application dated 29<sup>th</sup> May, 2013, the alleged contemnors were appointed as Receiver Managers of Polcino Oasis Village for a period of six (6) months and were required to open a bank account to be operated jointly and to present to the court duly audited management accounts on or before the expiry of six (6) months from the date of their appointment which they never did.

**The Respondent's case:**

3. Brunella Panini, one of the alleged contemnors, deponed an Affidavit on his own behalf and on behalf of the other two alleged contemnors.
4. According to the Respondents, the Applicant in filing the current application is motivated by malice and a vendetta because the erstwhile receiver managers have yet to file audited accounts for more than three (3) years after orders were issued by this court.
5. According to the Respondents, after they were appointed as managers on 9<sup>th</sup> July, 2013 by this court, and when the Court of Appeal subsequently made its orders on 12<sup>th</sup> November 2013 staying the orders of 9<sup>th</sup> July 2013, the time period contemplated for them to operate as Managers was not clearly communicated to them.
6. It is the Respondents' case that after the Court of Appeal order lapsed, it was not clearly communicated to them either by the court or their erstwhile advocate as to when their term was to expire and therefore they were unable to comply with the orders of this court.
7. It is the Respondents' contention that due to lack of familiarity with the laws of Kenya and the failure by the Advocates on record to advise them, they inadvertently failed to observe the time lines stipulated in the orders of 9<sup>th</sup> July 2013.
8. It is the Respondents' case that indeed, their erstwhile advocate undertook to file an Application together with the accounts which had been prepared by Ms Ippolito but to date he has failed to do so; that the said advocate has detained crucial documents, namely cheque books, which would enable them finalise to audit the accounts and that the accounts filed in court remain unaudited.

**Submissions:**

9. Mr. Binyenya, counsel for the Applicant submitted that the orders of 9<sup>th</sup> July 2013 were given in open court in the presence of the Respondents' counsel; that taking into account the one year that the Court of Appeal stayed the orders of 9<sup>th</sup> July 2013, six months lapsed on 20<sup>th</sup> January 2015.
10. Counsel has submitted that in blatant contravention of the said orders, the Respondents have failed or refused to present to this court audited management accounts.
11. The Respondents' counsel submitted that the Respondents, being Italian nationals, ought to have been notified of the nature of the orders and their responsibilities.
12. Counsel submitted that subsequent to the orders of 9<sup>th</sup> July 2013, no one anticipated the orders of the Cour of Appeal 13<sup>th</sup> November 2013 when the orders of this Court were stayed for one year and that is was not clear when the term of the Respondents as interim managers expired.

**Analysis and findings:**

13. The Respondents have deponed in their Replying Affidavit that they were aware of the orders of this court of 9<sup>th</sup> July 2013 appointing them as Managers of Polcino Oasis Village for a period of six (6) months. Indeed, the orders of this court arose from the Respondents' Application, which Application was allowed after long protracted arguments.
14. After the order of 9<sup>th</sup> July 2013 appointing the Respondents as receiver managers of Polcino Oasis Village, the matter was escalated to the Court of Appeal.
15. The Respondents have stated that the Court of Appeal stayed the orders of this Court appointing them as Managers with the Mandate of opening a joint account for a period of one year. It is the Respondents' own deposition that the order of the Court of Appeal was granted on 12<sup>th</sup> November 2013.
16. By the time the Court of Appeal stayed the orders of this court of 9<sup>th</sup> July 2013 on 12<sup>th</sup> November 2013, the alleged contemnors had already opened a joint account and managed the suit property for more than four months.
17. When the orders of the Court of Appeal lapsed, the Respondents resumed their duties as managers. The Respondents have deponed as follows:

**“Following the expiry of one year since the issuance of the orders by the Court of Appeal in Civil Application 11 of 2013 our erstwhile Advocate, Mr. Mark Macharia Ngaru informed us that we could resume our activity as Managers as the time stipulated for the filing and prosecuting of the Appeal by the Defendant had expired....subsequent to our resumption of duties, sometime on or about mid-November 2014, it was not clearly communicated to us either by the court or our erstwhile advocate as to when our term was to expire and therefore we were unable to comply with the orders as stipulated when six months term expired...”**

18. The Respondents have therefore admitted that they were informed to resume to manage the suit property when the stay order lapsed in mid November 2014. Which other guidance did they require if they knew that they had already served as Managers for four months before they resumed their duties in mid-November 2014?
19. If they resumed their duties in mid November 2014, they obviously knew that they had less than three months to submit to this court audited accounts.
20. The Respondents cannot hide behind the fact that they are foreigners to disobey court orders.
21. If the period within which they were supposed to supply to this court audited accounts was not clear, it was upon them to seek the guidance of this court by filing an Application. They never did that.
22. The Respondents have also argued that they have been unable to prepare audited accounts as ordered by the court because their former advocate went with the cheque books in respect to the bank account.
23. Again, no evidence has been placed before me to show the action that the Respondents have taken to have the said cheque books returned to them. In any event, why would the Respondents give to their advocate cheque books in respect to the account that they opened when the said advocate was not one of the people who was mandated by the court to manage the suit property?
24. The controversy surrounding the suit property has been aggravated by the alleged mismanagement of the money paid by the apartment owners to the previous managers. Indeed, I am aware of orders that have been made by the court to have audited accounts presented to the court by the previous managers, which orders have not been obeyed. It would appear that the Respondents are also bent into pursuing that route: of not availing to this court audited accounts even after opening bank accounts and collecting money from the apartment owners. That trend has to stop.
25. It is important for parties to a suit to know that court orders are not issued in vain. Whenever the orders of the court are issued, they must be complied with, and if not, the court ought to punish the contemnor for the maintenance of the rule of law and good order.
26. Having been satisfied that the three contemnors were aware of the orders of this court of 9<sup>th</sup> July 2013 and considering that the three contemnors have disobeyed the said order by failing to avail to this court the audited accounts for interrogation by all parties, I find and hold that Brunella Panini,

- Maurizio Turato and Paola Ippolito are in contempt of the orders of this court of 9<sup>th</sup> July 2013.
27. Consequently, the said Brunella Panini, Maurizio Turato and Paola Ippolito should present themselves to this court on 29<sup>th</sup> June, 2015 at 9.00 am and show cause why they should not be punished.
28. Brunella Panini, Maurizio Turato and Paola Ippolito shall pay the costs of this Application.

Dated and delivered in Malindi this **26<sup>th</sup>** day of **June**, 2015.

**O. A. Angote**

**Judge**