



REPUBLIC OF KENYA



KENYA LAW
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**Njau & 11 others v Markroscar Kenya Limited (Environment & Land
Case 623 of 2012) [2024] KEELC 3551 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3551 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 623 OF 2012**

MD MWANGI, J

APRIL 30, 2024

BETWEEN

JOHN WAKABA NJAU 1ST PLAINTIFF
EDWARD MWAURA MBUGUA 2ND PLAINTIFF
ANDREW KAMAU KINUTIA 3RD PLAINTIFF
SAMUEL NGUKU KARIUKI 4TH PLAINTIFF
PAUL KAMU KAHINJU 5TH PLAINTIFF
JOSEPH KINYANJUI MUIRURI 6TH PLAINTIFF
DAVID MBUGUA MBECA 7TH PLAINTIFF
PETER KIBUI THINJI 8TH PLAINTIFF
ZIPPORA WANJIKU KARIUKI 9TH PLAINTIFF
ELIUD NDICHU THUBIRA 10TH PLAINTIFF
FRANCIS MUNYINGI GAKAMI 11TH PLAINTIFF
MARY NDUTA MURABA 12TH PLAINTIFF

AND

MARKROSCAR KENYA LIMITED DEFENDANT



RULING

1. On 20th December, 2022, Justice Okong’o who had the conduct of this matter delivered a ruling granting 4 orders as hereunder:
 - a. The directors of the Defendant (Company), Irene Sonia Mumbi and Mitch K. Mureithi are found guilty of contempt of Court for deliberately disobeying the judgment of this Court made on 9th July, 2020 and the decree extracted therefrom on 2nd December, 2020.
 - b. The directors of the Defendant (Company), Irene Sonia Mumbi and Mitch K. Mureithi shall appear before the Court on a date to be fixed for mitigation and sentencing.
 - c. The directors of the Defendant (Company), Irene Sonia Mumbi and Mitch K. Mureithi are at liberty to purge their contempt before that date.
 - d. The directors of the Defendant (Company), Irene Sonia Mumbi & Mitch K. Mureithi shall pay the costs of the application.
2. Apparently, the Court file disappeared thereafter.
3. The file was subsequently transferred to Justice Wabwoto after reconstruction for purposes of mitigation and sentencing. Learned Judge Wabwoto, J, on 18th December, 2023 proceeded and issued the following orders:
 - i. Irene Sonia Mumbi and Mitch K. Mureithi are hereby to pay a fine of Kshs 300,000/= and in default to imprisonment of thirty (30) days.
 - ii. Warrant of arrest to issue and be executed by County Police Commander – Nairobi or any officer authorized by his office and commit the said persons to prison unless demonstrated that they have paid the fine of Kshs 300,000/=.
 - iii. Costs to the Plaintiffs payable by the Defendant.
4. On 15th April, 2024, Ms. Koki Mbulu Advocate for the Plaintiff informed this Court that the Defendant’s director had not paid the fine of Kshs 300,000/= as ordered by the Court. Further, though they had agreed to give to the Plaintiffs another title, they had not done so. She prayed for their committal to jail.
5. Mr. Keyonzo, Advocate for the directors of the Defendant Company, and who was present in Court acknowledged that he was aware of his clients’ conviction for contempt of Court and the orders to pay a fine of Kshs 300,000/=. He informed the Court that he had duly informed them of the Court orders and it was therefore beyond him. In regard to the title that the Defendant’s directors had offered to hand over to the plaintiffs, Mr. Keyonzo stated that the title had been submitted to the Lands’ Office for conversion. As soon as it was converted, he would submit it to the Plaintiffs.
6. Ms. Koki in reply insisted that the title was supposed to have been handed over to the Plaintiffs and not to the Land’s Office. In any event, there was no evidence of submission of the title to the Land’s Office for conversion as alleged from the bar by the Defendant’s Advocate. She urged the Court to jail the Contemnors.



Determination:

7. As I have demonstrated above, the directors of the Defendant Company were convicted of contempt of Court way back on 20th December, 2022. Subsequently thereafter, they were sentenced and directed to pay a fine of Kshs 300,000/= and in default, to imprisonment for thirty (30) days. It has been submitted that the directors of the Defendant Company have not paid the fine of Kshs 300,000/= as ordered by the Court. I have perused the record of the Court. I find no evidence of payment of the fine of Kshs 300,000/=.
8. In his ruling of 20th December, 2022, Justice Okong'o made reference to the Court of Appeal decision in the case of *Shimmers Plaza Ltd -vs- National Bank of Kenya Ltd* [2015] eKLR, where the Court was categorical that:

“...Court Orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court Orders is not optional, rather, it is mandatory and a person does not choose whether to obey a Court order or not.

...the Courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and centre. This would amount to abdication of our sacrosanct duty bestowed on us by *the Constitution*. The dignity and authority of the Court must be protected and that is why those who flagrantly disobey them must be punished, lest they lead us all to a state of anarchy.”
9. The Court of Appeal cited with approval the holding in the case of *Hardkinson -vs- Hardkinson* [1952] ALLER 567 where it was held that:

“It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a Court of Competent Jurisdiction to obey it unless and until it was discharged and disobedience of such order would as a general rule result in the person disobeying being in contempt and punishable by Committal or attachment and in an application to the Court by him not being entertained until he purged his contempt.”
10. The above decision emphasizes on the responsibility to obey Court Orders. Where a party fails to obey a Court Order, the Court must take appropriate legal action at its disposal for the purposes of safeguarding the Rule of Law; one of our national values under Article 10 of *the Constitution*.
11. Counsel for the Defendant admitted knowledge of the conviction and the sentence. He confirmed having informed the contemnors about the Court Orders, which they have continued to disobey.
12. Consequently, and in the absence of any evidence of payment of the fine of Kshs 300,000/=, the Contemnors must be imprisoned for thirty (30) days. The Order of the Court was clear that in default of payment of the fine of Kshs 300,000/=, the contemnors were to be committed to prison for thirty (30) days. Therefore, I hereby issue a warrant of arrest against Irene Sonia Mumbi and Mitch K. Mureithi to be executed by the Nairobi City County Police Commander or his duly authorized officers. The said Irene Sonia Mumbi and Mitch K. Mureithi should be presented to this Court for purposes of their committal to prison.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON

THIS 30TH DAY OF APRIL, 2024.



M.D. MWANGI

JUDGE

In the virtual presence of:

Ms Koki Mbullu for the Plaintiffs

Mr. Keyonzo for the Defendant

Yvette: Court Assistant

M.D. MWANGI

JUDGE

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