



Chumz Limited v Mageeta Investment Limited; Kivida, OCPD Dagoretti North & another (Contemnor); Khan t/a Motor ATREP (Interested Party) (Environment & Land Case E362 of 2022) [2024] KEELC 6138 (KLR) (19 September 2024) (Ruling)

Neutral citation: [2024] KEELC 6138 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E362 OF 2022
LN MBUGUA, J
SEPTEMBER 19, 2024**

BETWEEN

CHUMZ LIMITED APPLICANT

AND

MAGEETA INVESTMENT LIMITED DEFENDANT

AND

BONFACE KIVIDA, OCPD DAGORETTI NORTH CONTEMNOR

AHMEDLATIF ABDI, OCS MUTHANGARI POLICE STATION . CONTEMNOR

AND

ADIL KHAN T/A MOTOR ATREP INTERESTED PARTY

RULING

1. What is before this court are two contempt applications, one dated 9.2.2024 brought forth by the plaintiff and the other one is dated 11.3.2024 brought forth by the defendant. The applications present a classic case of “ how not to proceed with a matter” with a plethora of applications flooding the litigation arena.
2. The background of the dispute herein is captured in the ruling delivered by this court on 20.4.2023, whereby it emerged that the protagonists had entered into a lease agreement in which the defendant leased the suit premises L.R NO. 330/298 to the plaintiff and there was a clause for subletting the said premises. The defendant had embarked on issuing an eviction notice to the plaintiff and in a ruling dated 20.4.2024, the court decreed inter-alia that it had jurisdiction to hear the matter, that the plaintiff was not to be evicted, the plaintiff was not to interfere with the business of the Interested party and the parties were to continue to comply with the obligations set out in the lease.



3. Thereafter, it appears that the compliance with court's directions particularly on filing and service of pleadings, witness statements and documentary evidence became a rather lethargic laboured exercise for the warring parties, exacerbated by the filing of numerous applications.
4. To start with, on 26.6.2023, the defendant sought leave to file amended defence, of which it was granted 21 days to make the amendments. Three months later on 18.9 2023, the defence counsel was addressing the court as follows; “ ..we need to amend our defence and raise issue of jurisdiction!”. The court indulged them and gave them 14 days to file and serve the amended defence. The court also gave directions for the parties to file and serve their paginated trial bundles containing their respective pleadings, witness statements and documentary evidence by 18.10.2023, but there was no compliance with these directions. This prompted the court to deliver a ruling on 25.10.2023 directing the defendant to file their amended pleadings by 9.11.2023, while the interested party was to file their pleadings by 16.11.2023.
5. The final Pretrial was conducted on 13.2.2024 and the court gave a hearing date of 15.7.2024. However, it emerged that plaintiff had filed one of the current applications (dated 9.2.2024) and the court gave directions for the prosecution of the same. Later, it was brought to the attention of the court that there was another application dated 11.3.2024, and ultimately, the hearing could not proceed as scheduled.

Other applications.

6. The two applications dated 9.2.2024 and 11.3.2024 are not the only ones filed in this matter. There is the application dated 14.3.2023 filed by the defendant but it was promptly withdrawn on 4.5.2023. Then there is the application dated 29.2.2024 filed by the defendant to set aside the orders of 20.4.2023 and to cite the plaintiff for contempt. That application was not prosecuted by the defendant before filing their other application dated 11.3.2024 seeking similar orders to cite the plaintiff for contempt.
7. This far, it is clear beyond peradventure that the defendant has failed to uphold the overriding objective set out under Section 1A (3) of the [Civil Procedure Act](#) which stipulates that;

“A party to civil proceedings or an advocate for such a party is under a duty to assist the court to further the overriding objective of the Act and, to that effect, to participate in the processes of the court and to comply with the directions and orders of the Court.”
8. The defendant appears to be on a mission to create a conundrum so as to derail the prosecution of the suit by filing a plethora of applications which amounts to an abuse of the court's process. In light of the foregoing analysis, this court is in agreement with the plaintiff that the application of 11.3.2024 was filed as an after thought. As such, it will not be determined as a separate application. Instead, the court will treat the said application as a response to the plaintiff's application dated 9.2.2024.

The Application dated 9.2.2024

9. The plaintiff seeks the following orders in the above application;
 - i. SPENT.
 - ii. That ASHISH MAGON the director of the Defendant herein, BONFACE KIVINDA, the OCPD Dagoretti North and AHMEDLATIF ABDI, the OCS Muthangari Police Station be cited for contempt of Court for disobeying the Honourable Court's Orders issued on 20th April, 2023.



- iii. That ASHISH MAGON, BONFACE KIVINDA and AHMEDLATIF ABDI be committed and detained in civil jail for a period not exceeding six (6) months for contempt of the Orders of this Honourable Court issued on 20th April, 2023.
- iv. That costs of this application be borne by the defendant.
10. The application is premised on the grounds on the face of the application and the supporting affidavit of Muchiri Wambugu, the director of the plaintiff. The plaintiffs have also filed a replying affidavit dated 18.4.2024 also sworn by Muchiri Wambugu where he has availed a document indicating that the directors of the defendant are Magon Ashish and Sirika Magon.
11. The deponent contends that the plaintiff was not given access to the suit premises by one Ashish Magon and that the orders of 20.4.2023 were never complied with, adding that instead of the police complying with the courts directions, they arrested him.
12. In response and in opposition thereof, the defendant filed a replying affidavit sworn by one Ajay Magon on 29.2.2024, and the application dated 11.3.2024 with a supporting affidavit by the same deponent.
13. Generally, the defendants are lamenting that the plaintiff does not pay rent. They refute the claim that they have denied the plaintiff access to the suit premises. The defendants contend that the order of 20.4.2023 restraining them from evicting the plaintiff from its property is unjust and inequitable as the plaintiff has been abusing the court process.
14. One Ashish Magon has also sworn a supplementary affidavit dated April 2024 (the actual date is not clearly legible) where he introduces himself as a director of the defendant. He avers that Ajay Magon is the managing director of the defendant. He reiterates that the plaintiff has been in breach of the lease agreement dated 21.5.2020 and that is why they are seeking orders of contempt.
15. I have considered the submissions of the plaintiff dated 14.3.2024 as well as those of the defendant dated 30.4.2024 and 28.3.2024. The question for determination is; Who as between the plaintiff and the defendant is in contempt of the court orders of 20.4.2023?
16. I find that the plaintiff has given minute details of the efforts they have made to utilize the suit premises even going to the OCPD Muthangari police station, but all those efforts have been in vain since they have been denied access to the suit premises by the defendants, apparently the police even arrested the plaintiff's director.
17. The court notes that vide the ruling of 20.4.2023 the lease agreement had a provision of subletting the suit premises whereby the plaintiff was the one who was having the subtenants except the interested party. I pose the question; how is the plaintiff expected to comply with the terms of the lease if he cannot even access the suit premises where the sub - tenants are?. It is not lost to this court that the scenario which played out in the prosecution of the application dated 4.11.2022 appears to be the same one being perpetuated by the defendant whereby the defendant is using the police to make the performance of the terms of the lease impossible, thereby convoluting the dispute at every stage and step of litigation.
18. I also note that one Ajay Magon has purported to swear the replying affidavit dated 29.2.2024 and the supporting affidavit dated 11.3.2024, yet the documents of registration availed by the plaintiff indicates that the directors of the defendants are Ashish Magon and Sirkan Magon. The supplementary affidavit of Ashish Magon stating that Ajay is a director was only filed when Muchiri Wambugu swore the replying affidavit dated 18.4.2024 revealing the directors of the defendant.



19. From the history and analysis given herein, there is no doubt that the defendants are the ones who have embarked on a mission to disregard the orders of 20.4.2023 and to frustrate the performance of the lease.
20. Section 5 of the Judicature Act provides for the punishment of contempt of court in the following terms;

“The High Court and the Court of Appeal shall have the same power to punish for contempt of court as at the time in possession by the High Court of England.....”
21. Courts have held that for a person to be held in contempt, it must be evident that a court order was deliberately disobeyed. see Court of Appeal case of Michael Sisto Mwaura Kamau vs director of Public Prosecution and Four Others [2018] eKLR. And in the instant case, it is crystal clear that the defendant is in contempt of the court orders of 20.4.2023. However the orders of 20.4.2023 were apparently to be enforced by the OCS Kabete Police Station, yet in the application of 9.2.2024 the police officers cited for contempt are OCPD Dagoretti North and the OCS Muthangari police station. In that regard, the contempt orders sought against the police are declined.
22. Before I give the final rendition this court would like to bring to the attention of the parties my decision delivered in Lawrence Kinyua Mwai vs Nyariginu Farmers Company Limited and Another [2019] eKLR, where the court severed a Gordian knot choked by a record 18 applications. In that case, the court invoked the principles of Active Case Management by giving orders geared towards embracing the overriding objectives set out in the Civil Procedure Act and Article 159 (2) of the Constitution on the expeditious delivery of justice, as well as application of the then existing judiciary blue print known as “Sustaining judiciary Transformation (SJT 2017-2021” where one of the key strategic areas was efficient service delivery in the administration of justice.
23. Similarly in the case at hand, the court will apply the same principles of Active Case Management and will remain hawk eyed to ensure that the courts processes are not abused through the filing of a plethora of applications. At the same time the parties are directed to focus on the resolution of the substantive issues since pretrial directions have already been given.

Rendition

1. The application dated 29.2.2024 is dismissed.
2. The application dated 11.3.2024 is dismissed.
3. The application dated 9.2.2024 is allowed to the extent that Ashish Magon is found to be in contempt of the court orders of 20.4.2023, hence a Notice to Show Cause as to why the contemnor should not be convicted is hereby issued against him.
4. The defendant is to pay the costs of the application dated 9.2.2024.
5. This matter is to be listed for hearing on priority basis.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF SEPTEMBER, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-



Kirimi for Plaintiff

M/s Wakarima holding brief for Chege for Defendant

Ambala for Interested Party

Court assistant: Eddel

