



**Ringsview Apartments Limited v Vishnu Builders Company Limited & another (Environment & Land Case 782 of 2014) [2024] KEELC 7195 (KLR) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7195 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 782 OF 2014  
AA OMOLLO, J  
OCTOBER 24, 2024**

**BETWEEN**

**RINGSVIEW APARTMENTS LIMITED ..... PLAINTIFF**

**AND**

**VISHNU BUILDERS COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**VIJAY MORJARIA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The 2<sup>nd</sup> Defendant/Applicant have moved this court via the application dated 9<sup>th</sup> June, 2023 seeking to have the plaintiff punished for being in contempt of the court order issued on 30<sup>th</sup> October, 2014. The application was premised on grounds inter alia;
  - a. That the essence of issuance of the status quo orders was to preserve the suit property which is L.R No. 4858/11 commonly known as Ringview Apartments. Both the Plaintiff and the Defendants were barred from dealing with the property in any manner that would jeopardize the substratum of the suit.
  - b. That at no point during the pendency of the suit were the said orders discharged.
  - c. That in blatant disregard of the said Court Orders, the Plaintiff went ahead to dispose Apartment No. A4 and caused to be registered a lease in favour of Joram Mwaura Kiuna being entry No. 16 on the title to L.R No. 4858/11. The said lease was registered on 29<sup>th</sup> April, 2016.
  - d. That similarly on the said 29<sup>th</sup> of April, 2016, the Plaintiff caused to be entered in the register entry numbers 15, 16 and 17 in total disobedience of Court Orders.
  - e. That further, the Plaintiff caused to be entered in the register entry number 19 and 20 on the 7<sup>th</sup> of December, 2016 and entry numbers 21 to 44 on the 6<sup>th</sup> of November, 2018 and finally entry number 45 on 1<sup>st</sup> August, 2022.



2. Mr. Vijay Mojaria swore an affidavit dated 9<sup>th</sup> June, 2023 in support of the application. He deposed that the interim injunction were first issued by the court *ex parte* on 18<sup>th</sup> June 2014 for 14 days. Subsequently, they were extended on 1<sup>st</sup> July 2014, 30<sup>th</sup> June, 2014 until 30<sup>th</sup> October, 2024. That it is on 30<sup>th</sup> October, 2024 when the court issued an order of status quo in the presence of counsel for the plaintiff and 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. That the orders were to remain in force until the suit is determined. A copy of this order was annexed as “VJ4.”
3. The Applicant avers that the plaintiff/Respondent disregarded these orders and sold Apartment No. 4 and caused it to be registered as entry No. 16 on the title L.R No. 4858/1) in favour of Joram Kiuna. He accused the plaintiff of registering entries nos 15, 16 and 17 on 29<sup>th</sup> April, 2016 in total disobedience of the Court Orders. That the action of the plaintiff were deliberate and has made a mockery of this court by incessantly dealing with the property and the interest of justice requires the rule of law be upheld.
4. The Plaintiff opposed the application vide a replying affidavit sworn by Dr Benjamin Gikonyo on swearing the same who as a director of the Plaintiff. He deposed that there existed no order forbidding the plaintiff from selling Apartment A4 or any other except those already registered in the 2<sup>nd</sup> Defendant’s name. He avers that Apartment A4 has never been sold to the 2<sup>nd</sup> Defendant and that it was sold to a 3<sup>rd</sup> party in April, 2014 before the current law suits were filed.
5. The Plaintiff asserts that the 2<sup>nd</sup> Defendant admitted before the judge that his attempts to pay for A4 failed when the bank rejected his lawyer’s professional undertaking. That the directors can only be found guilty of contempt if the sale were made post the court order. In paragraphs 8 – 10 of the Replying Affidavit, the Respondent shift the blame of violation of court orders on the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
6. It is the Respondent’s assertion that the application before the court brought pursuant to section 5(1) of the *Judicature Act* as well as Section 63 of the *Civil Procedure Act* which sections grants this Court power to punish contempt akin to the power possessed by the High Courts of Justice of England. He cited Section 63 (c) of the *Civil Procedure Act* which provides thus;
  - a. ....
  - b. ....
  - c. grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold;”
7. The plaintiff goes further to state that the threshold for an application of contempt was succinctly set out by Justice John Mativo (as he then was) in the case of Samuel M. N. Mweru & Others vs. National Land Commission & 2 Others (2020) eKLR wherein he stated that;
 

“...in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of wilfulness and bad faith on the part of Respondent would normally be inferred....”
8. It is further deposed on behalf of the plaintiff that the order of 30<sup>th</sup> October, 2014 forbade the Defendants from selling, transferring, accessing, barricading or interfering with possession and



enjoyment of apartments erected on L.R. 4858/1) and whose ownership was subject to the court proceedings. That there is no evidence shown that the plaintiff was also forbidden from dealing with apartment A4. He added that Emmanuel Gikonyo was not a director of the Plaintiff between 2014 – 2016 so he is not liable for any contempt. In conclusion, the Respondent urged that the application be dismissed.

9. Parties filed their respective submissions. The applicant also relied on the case of Samuel M. N. Mweru & Others versus National Land Commission & 2 Others (2020) EKLK supra at paragraph 7 of this ruling. He submits that the purpose of the orders issued on 30<sup>th</sup> October, 2014 was clear; to preserve the suit properties and maintain their status so as not to prejudice any of the parties or render the final decision of the court nugatory. This at the same was reiterated by in the case of Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & Another (2020) eKLR which held that;

“...By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision.”

10. On who should be held liable, the Applicant stated that a company acts through its directors. He cited section 34(1) of the *Companies Act* which provides that the power of directors to bind a company is free of any limitation. In support of this argument he also cited the case of Geoffrey Makana Asanyo vs Nakuru Water & Sanitation Services Company & 6 Others (2014) eKLR.

11. The Plaintiff/Respondent submitted on the standard of proof required in contempt cases and cited the holding in the case of Gatharia K. Mutikika vs. Baharini Farm Ltd (1985) KLR 227. The Plaintiff argued that the orders of 19<sup>th</sup> June, 2014 extended to 18<sup>th</sup> July, 2014 was ambiguous as it did not mention which apartments that could not be sold. He relied on the decision of Alkan Connections Limited vs Safaricom Ltd and 2 Others (2013) eKLR which held thus;

“However, it is my view that where the case is equally balanced, it cannot be said to meet the threshold of proof beyond peradventure. In the premises I agree that the order as extracted was not in the circumstances of this case so clear, precise and unambiguous as to the basis upon which contempt of court proceedings can be sustained.”

12. The plaintiff also submits that a court order cannot forbid an act that has already taken place as in this case Apartment A4 was sold prior to the filing of this case and it is only the registration process which delayed. It is their submission that the plaintiff's directors are not guilty of any disobedience of the court order and urged for the dismissal of the application.

### **Analysis & determination:**

13. The question before the court is one to determine whether the plaintiff is in contempt of this court orders issued on 18<sup>th</sup> June 2014 and extended thereafter and or confirmed on 30<sup>th</sup> October, 2014. The court record shows that the plaintiff was on 18<sup>th</sup> June, 2014 granted interim orders of injunction in terms of prayer 4 of its application dated 17<sup>th</sup> June, 2014 for a period of 14 days.



14. This order of 18<sup>th</sup> June, 2024 was subsequently extended on different dates when the application came up for hearing. On 1<sup>st</sup> July, 2014, the trial judge issued the following orders;
- “(i) The parties were directed to file responses to the application and plaintiff/applicant to file further affidavit
  - (ii) The interim orders were extended on terms that the plaintiff was to allow the Defendants access into the premises for purposes of removing his equipment and/or taking an inventory of the same.
  - (iii) The plaintiff shall also not transact with third parties in regard to the apartments the 2<sup>nd</sup> Defendant claims to have purchased (particulars to be furnished pending the hearing of the application on 29<sup>th</sup> July, 2014).”
15. It is not clear from the proceedings how these particulars were to be furnished to the plaintiff/court during the next hearing date. The other order issued on 30<sup>th</sup> October, 2014 compromising the application stated thus;
- “By consent of parties, the Plaintiff’s application is dispensed with on terms that the interim orders in place are sustained until the suit is heard and determined on merits. The parties to comply with order 11 within 60 days and attend the pre-trial conference on 28<sup>th</sup> January, 2015.”
16. An analysis of the court record indicate that the interim orders in place favoured the plaintiff who had moved the court on 17<sup>th</sup> June, 2014 and were given orders of injunction restraining the Defendants from selling and or accessing or dealing with L.R No. 4858/11. The orders were extended on 1<sup>st</sup> July, 2014 with a variation that the plaintiff was not to transact with 3<sup>rd</sup> parties over apartments the Defendants claimed to have purchased.
17. For the contempt to be proved, the obligation was on the 2<sup>nd</sup> Defendant to demonstrate when and how he furnished the details of the apartments he claimed to have purchased. The furnishing of the details in my view was made via the detailed replying affidavit sworn in opposition to the impugned application. In the alternative the pleadings filed by the 2<sup>nd</sup> Defendant and served on the plaintiffs which listed the apartments that were being claimed (filed prior to the order of 30<sup>th</sup> October, 2014).
18. In the replying affidavit dated 9<sup>th</sup> July 2014, the 2<sup>nd</sup> Defendant/Applicant gave details of the apartments he was laying claim to under paragraph 4. At paragraph 4 (XXXVII) the 2<sup>nd</sup> Defendant made reference to the sale agreement he alleged was entered into with the plaintiff for purchase of apartment CI and A4 and whose copies were annexed as V.M 41 and 42.
19. The 2<sup>nd</sup> Defendant also filed a defence and counter-claim dated 17<sup>th</sup> August, 2014 where at paragraph 22 and 23 of the Counter-claim he listed the apartments he was claiming including apartment A4. The same is also contained in prayer (b) and (c) of the reliefs sought in the Counter-claim.
20. On the other hand, the Plaintiff/Respondent averred that there was no order restraining it from dealing with apartment A4. My opinion and I so hold that the order issued on 1<sup>st</sup> July, 2014 was specific that the plaintiff was not to deal with any apartment the Defendants “claimed” to have purchased. The 2<sup>nd</sup> Defendant’s claim pleadings laid to have purchased apartment A4 so it was included in this impugned order. In the event the plaintiff was in doubt, it was incumbent upon him to await the determination of the suit before dealing with units included in the Replying Affidavit and defence and Counter-claim.



21. The other defence raised is that apartment A4 was sold before this suit was filed. The bank transaction annexed to the replying affidavit relates to payment made to the plaintiff by Joram Mwaura Kiuna for the sum of Kshs.17,000,000 done on 9<sup>th</sup> July, 2016. Other than the offer letter which is dated (4/4/2014), there is no correspondence from the bank to confirm the delay in making the payments. Neither were there any copies of transfer forms produced to show the date of execution and or day book reservation that would have corroborated the assertion that it is the registration process which delayed.
22. The plaintiff further asserted that it has not interfered with the apartments claimed by the Applicant and placed reliance on the letter dated 27<sup>th</sup> September, 2012 which according to them listed the apartments the 2<sup>nd</sup> Defendant/Applicant was purchasing to include B5, B2, B4. The plaintiff accused the 2<sup>nd</sup> Defendant of creating confusion on which apartments he was buying. This argument is already answered that the Replying Affidavit and Counter-claim already contained the number of apartment the 2<sup>nd</sup> defendant claimed. Whether his claim had a basis or not was a question to be resolved at the hearing of the main suit.
23. The Plaintiff/Respondent equally stated that the order was ambiguous because it did not mention the apartments the plaintiff was forbidden from selling. The order said all apartments the 2<sup>nd</sup> Defendant was claiming to have purchased. The order in my view was specific taking note that the all apartments claimed were made known to it by the pleadings filed in July and August 2014 long before the registration in favour of the 3<sup>rd</sup> party (Joram Mwaura) in 2016 and before the order of 30<sup>th</sup> October, 2014 was issued.
24. There is no dispute that the impugned entry was made in 2016 without any variation to the orders of 1<sup>st</sup> July, 2014 and 30<sup>th</sup> October, 2014. I am therefore satisfied that to the extent of evidence of dealings without is proof of the contempt on the part of the plaintiff.
25. The next question is who should be held liable for the actions of the plaintiff. Dr. Benjamin Mbira Gikonyo did not contract the assertion that directors are liable for actions on behalf of the plaintiff. His concern which he pointed out that was Emanuel Gikonyo was not a director of the plaintiff between the year 2014 – 2016. In support of this argument the plaintiff produced the search from the companies Registrar dated 9<sup>th</sup> November, 2011 which gives the names of directors as that date.
26. Since the directorship of Emanuel Gikonyo was picked up by the Respondent, the Applicant was required in law (burden of proof) to demonstrate that indeed Emanuel Gikonyo was a director in 2016 when the impugned transaction took place. In this instance, no search from the Registrar of Companies was produced to make the said Emanuel be held liable for the actions of the Plaintiff. Therefore, from the parties sued in these contempt proceedings, the director found culpable is Dr. Benjamin Mbira Gikonyo. He shall appear in court to show cause and for sentencing on a date to be given during the delivery of this ruling.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF OCTOBER, 2024**

**A. OMOLLO**

**JUDGE**

