Okumu & 10 others v Cheres & 3 others (Land Case E082 of 2024)
[2024] KEELC 14065 (KLR) (13 December 2024) (Ruling)

Neutral citation: [2024] KEELC 14065 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

LAND CASE E082 OF 2024

JO MBOYA, J

DECEMBER 13, 2024

BETWEEN

GIDEON KIZITO OKUMU ..... 1ST PLAINTIFF

ALIA MOHAMED ..... 2ND PLAINTIFF

ERIC KAGAI ..... 3RD PLAINTIFF

MARGARET OGUTU ..... 4TH PLAINTIFF

JULIE LUSIKE NABWERA ..... 5TH PLAINTIFF

CHARLES MUTINDA ..... 6TH PLAINTIFF

LUTHER ANUKUR ..... 7TH PLAINTIFF

ELIZABETH JUMA ..... 8TH PLAINTIFF

DAVID MASINDE ..... 9TH PLAINTIFF

VIOLAS OTIENO ..... 10TH PLAINTIFF

MARIA REDMOND ..... 11TH PLAINTIFF

AND

REUBEN KIPCHIRCHIR CHERES ..... 1ST DEFENDANT

CHARLES MAKORY RIGORO ..... 2ND DEFENDANT

THE REGISTRAR OF COMPANIES ..... 3RD DEFENDANT

THE HON. ATTORNEY GENERAL ..... 4TH DEFENDANT

RULING

Introduction And Background:

1. The Plaintiffs/Applicants have approached the court vide the Notice of Motion dated the 23rd April 2024; and in respect of which same [Applicants] have sought for the following reliefs;

    i. That this Application be certified urgent and service be dispensed with in the First instance.

    ii. That pending the hearing and determination of this Application interparty, this Honourable court be pleased to issue orders freezing accounts 011506501xxxxx, 011506501xxxxx and 0115065018xxxxxall belonging to Green Gardens Management Company Ltd and held at the Co-operative bank.

    iii. That this Honourable court be pleased to issue orders freezing accounts 011506501xxxxx, 011506501xxxxx and 0115065018xxxxxall belonging to Green Gardens Management Company Ltd and held at the Co-operative bank until after the convention of the Annual General Meeting of Green Gardens Management Company Ltd.

    iv. That this Honourable court does issue an order directed at the 3rd Defendant to ensure that the Plaintiffs names are reinstated to the register of the management Company as shareholders/ members of Green Gardens Management Company Ltd.

    v. That this Honourable court does an order issue an allowing the Plaintiffs to call for an Annual General Meeting of Green Gardens Management Company Ltd subject to requisite notices being given.

    vi. That this Honourable court Directs that the 1st and 2nd Defendant herein to Appear before it on such a date as the court may direct for the purposes of cross examination on why they should not be punished for being in contempt of the orders of this Honourable court of the 14th day of March 2024.

    vii. That this Honourable Court does find the 1st and 2nd Defendants/Respondents in Contempt of the Orders of this Honourable Court of the 14th day of March 2024 and Commits them to imprisonment for Six (6) months or metes out such other punishment as the court may deem fit.

    viii. That this Honourable Court grants any other order in the interest of justice.

    ix. That the costs of this application be provided for.

2. The subject application is premised on the various grounds which have been highlighted in the body thereof. Furthermore, the application is supported by the affidavit sworn Gideon Okumu on even date. In addition, the application is also supported by the further affidavit of the same deponent and which has been sworn on the 18th September 2024.

3. On the other hand, upon being served with the subject application, the 1st and 2nd Respondents filed a Replying affidavit sworn by Reuben Kipchirchir Cheres [First Respondent herein] and which has been sworn on the 18th June 2024. Instructively, the deponent of the Replying affidavit does not dispute the fact that the names of the Plaintiffs herein have neither been reinstated nor restored to the register of the management corporation. Furthermore, the deponent does not dispute that the annual general meeting that was decreed by the court has not been held to date.

4. The Application beforehand came up for hearing on the 18th July 2024; whereupon the advocates for the parties agreed to canvass and dispose of the application by way of written submissions. To this end, the court proceeded to and circumscribed the timelines for the filing and exchange of the written submissions.

5. The Applicants proceeded to and filed their written submissions dated the 24th September 2024 whereas the 1st and 2nd Respondents filed their written submissions dated the 11th November 2024. Notably, both sets of written submissions are on record.

Parties' Submissions:

A. Applicants' Submissions:

6. The Applicants filed written submissions dated the 24th September 2024 and wherein the Applicants have adopted and reiterated the contents of the supporting affidavit and the further affidavit sworn on by Gideon Okumu [the 1st Plaintiff/Applicant].

7. Furthermore, the Applicants herein have proceeded to and canvassed two [2] salient issues for consideration and determination by the court. Firstly, learned counsel for the Applicants has submitted that the parties herein entered into a consent and in respect of which the dispute beforehand was compromised. In particular, it has been contended that pursuant to the terms of the consent, the 1st and 2nd Respondents were obligated to call for and convene the annual general meeting of the management corporation within a set timeline.

8. Other than the foregoing, learned counsel for the Applicants has also submitted that the 1st and 2nd Respondents were obligated to ensure that the names of the Applicants are restored to the register of the company, namely, the management corporation that runs the affairs of Green Gardens Estate. Nevertheless, it has been contended that despite the clear terms of the consent judgment, the 1st and 2nd Respondents and by extension the board of the management corporation of Green Gardens management company limited have failed to comply with and/or adhere to the terms of the judgment. In this regard, it has been posited that the terms of the judgment of the court have therefore been ignored and/or disregarded.

9. Secondly, learned counsel for the Applicants has submitted that orders of the court ought to be complied with and or adhered to. In any event, learned counsel for the Applicants has posited that it is incumbent upon all and sundry, the Respondents not excepted, to abide by and comply with the court orders.

10. To underscore the submissions touching on the unqualified obligation of person to comply with and or adhered to order[s] of the court, Learned counsel for the Applicants has cited and referenced *inter-alia* *Econet Wireless Kenya Ltd v The Minister for Information & Communication of Kenya & another* [2005]eKLR; *Shimmers Plaza Ltd v National Bank of Kenya Ltd* [2015]eKLR; *B v Attorney General* [2004] 1KLR 431 and *Rifregeration and Kitchen Utensils Ltd v Gulabchand Poptalal Shah & Another* Civil Application No. 39 of 1999 [UR], respectively.

11. Arising from the foregoing, learned counsel for the Applicants has therefore implored the court to find and hold that the application beforehand is meritorious. To this end, the court has been invited to proceed and allow the application and in particular, to cite and punish the 1st and 2nd Respondents for contempt/ wilful disobedience of Lawful Court Orders.

B. 1st & 2nd Respondents' Submissions:

12. The 1st and 2nd Respondents filed written submissions dated the 11th November 2024 and wherein same [1st and 2nd Respondents] have reiterated the contents of the Replying affidavit sworn on the 18th June 2024.

13. Other than the foregoing, learned counsel for the 1st and 2nd Respondents has raised and canvassed two [2] salient issues for consideration by the court. Firstly, learned counsel for the said Respondents has submitted that the application beforehand is incompetent and thus ought to be struck out. In particular, learned counsel for the 1st and 2nd Respondents has contended that the application has been brought pursuant to the provisions of *Contempt of Court Act* [2016] which Act had been declared unconstitutional and is thus non-existent.

14. To this end, learned counsel for the 1st and 2nd Respondents has cited and referenced the decision in the case of *Kenya Human Rights Commission v The Attorney General & Another* [2018]eKLR, wherein the court found and held that the Contempt Act was unconstitutional.

15. In a nutshell, learned counsel for the 1st and 2nd Respondents has invited the court to find and hold that the instant application, which is underpinned by the *Contempt of Court Act*, is thus incompetent and invalid.

16. Secondly, learned counsel for the 1st and 2nd Respondents has submitted that the consent judgment which was entered into on the 14th March 2024 contained a raft of orders which are to be read conjunctively. In particular, it has been contended that there are aspects of the orders which require the Plaintiffs to account for the monies which had been received by themselves and to tender accounts for and on behalf of the management corporation.

17. Furthermore, learned counsel for the 1st and 2nd Respondents has submitted that despite the requirement for the Plaintiffs to tender accounts as pertains to the monies that were received by same [Plaintiffs] the Plaintiffs/Applicants have failed and neglected to do so. In this regard, it has been posited that owing to the failure by the Plaintiffs to account for the monies, it has not been possible to convene the annual general meeting of the management corporation taking into account the provisions of Regulation 24 of the Sectional Properties Corporation Bylaws.

18. Other than the foregoing, learned counsel for the 1st and 2nd Respondents has also submitted that the 1st and 2nd Respondents wrote to the Registrar of Companies to restore and reinstate the names of the Plaintiffs/Applicants to the register of membership/shareholders of Green Gardens Management Company Ltd. However, it has been contended that the 1st and 2nd Respondents do not have any powers to restore and/or reinstate the names of the Plaintiffs/Applicants.

19. Further and in any event, it has been contended that the powers to reinstate and restore the names of the Applicants into the Register of Shareholders of the Management Company rests with the Registrar of companies and not otherwise.

20. Arising from the foregoing, it has been contended that if there is failure or neglect to restore the names of the Plaintiffs/Applicants to the register of shareholders of Green gardens Management Company Ltd, then such failure can only be blamed on and accounted for by the registrar of companies.

21. Be that as it may, learned counsel for the 1st and 2nd Respondents has submitted that the 1st and 2nd Respondents have not disobeyed the terms of the judgment and the Decree of the court. In this regard, learned counsel for the said Respondents has invited the court to find and hold that the application beforehand is not merited.

Issues For Determination:

22. Having reviewed the application dated the 23rd April 2024; and the response thereto and upon taking into consideration the written submissions filed on behalf of the respective parties, the following issues do crystalize [emerge] and are therefore worthy of determination;

    i. Whether the invocation of and reliance upon the *Contempt of Court Act*, 2016; which was declared unconstitutional renders the application incompetent or otherwise.

    ii. Whether the Applicants have established and proved willful act[s] of disobedience of lawful court orders or otherwise.

Analysis And Determination

Issue Number 1 Whether the invocation of and reliance upon the Contempt of Court Act,2016; which was declared unconstitutional renders the application incompetent or otherwise.

23. The Plaintiffs/Applicants herein have filed the subject application seeking to have the 1st and 2nd Respondents cited and punished for contempt of the lawful court orders issued on the 14th March 2024. For good measure, the subject application is expressed to be brought pursuant to the provisions of Sections 4, 5, 6 and 28 of the *Contempt of Court Act*, 2016.

24. To the extent that the subject application is expressed to be brought pursuant to the provisions of the *Contempt of Court Act*, 2016, learned counsel for the 1st and 2nd Respondents has contended that the application is therefore incompetent and invalid.

25. Arising from the foregoing, learned counsel for the 1st and 2nd Respondents has therefore implored the court to find and hold that the application is incompetent and thus ought to be struck out.

26. To buttress the submissions that the application beforehand is incompetent, learned counsel for the 1st and 2nd Respondents has cited and referenced the decision in the case of *G. O. versus ACG* [2022]eKLR; where the court is stated to have held that an application grounded on the *Contempt of Court Act*, 2016; which was declared unconstitutional is incompetent.

27. To start with, there is no gainsaying that the application beforehand seeks to have the 1st and 2nd Respondents cited and punished for contempt/willful disobedience of lawful court orders. For good measure, the golden thread that runs beneath the entire application is contempt of court orders.

28. On the other hand, it is not lost on this court that the *contempt of court Act* 2016 was found and declared unconstitutional. In this respect, it suffices to take cognizance of the decision of the court in the case of *Kenya Human Rights Commission v The Attorney General & Another* [2018]eKLR.

29. Notwithstanding the foregoing, it is common knowledge that the law of contempt remains applicable in Kenya. Instructively, upon the repeal of the *contempt of court Act* 2016, the legal position reverted to the provisions of Section 5 of the *Judicature Act* Chapter 8 Laws of Kenya; Section29 of the *Environment and Land Court Act*,2011; and Order 40 Rule 3 of the *Civil Procedure Rules*,2010.

30. Arising from the foregoing, there is no gainsaying that the moment a litigant seeks to have a citizen/subject cited and punished for contempt, the courts of law are obliged to take cognizance of the provisions of Section 5 of the *Judicature Act*, Chapter 8, Laws of Kenya; and by extension the provisions of the *Contempt of Court Act* of 1981 Act and Part 81 of *Civil Procedure (Amendment No. 2) Rules*, 2012, which continues to apply to the Republic of Kenya. [See the decision of the court of appeal in *Christene Wangari Gachege v Elizabeth Wanjiru Evans & 11 Others* [2014]eKLR]. [see also *Shimmers*

Plaza Limited v National Bank of Kenya Limited (Civil Appeal 33 of 2012) [2015] KECA 945 (KLR) (Civ) (18 February 2015) (Ruling)].

31. To my mind and in my considered opinion, the mere invocation of the provisions of the *Contempt of Court Act* 2016 [which was declared unconstitutional] does not render an application for contempt incompetent and invalid.

32. Additionally, if one were to say that the invocation and citation of a wrong provision of the law renders the application incompetent and invalid then such a scenario would amount to elevating procedural technicality to a level of criminal offense which ought not to be the case. For good measure, such an endeavour would not only belittle, but insubordinate the provisions of Article 159[2][d] of the *Constitution* 2010.

33. Other than the foregoing, it is also instructive to underscore that invocation and citation of a wrong provision of the law [including the provisions of the Law which have been repealed] has also been found to be curable. Instructively, the provisions of Order 51 Rule 10 of the *Civil Procedure Rules*,2010; are apt.

34. For ease of appreciation, it is imperative to reproduce the said provisions.

35. Same are as hereunder;

> Provision under which application is made to be stated [Order 51, rule 10]
>
> (1) Every order, rule or other statutory provision under or by virtue of which any application is made must ordinarily be stated, but no objection shall be made and no application shall be refused merely by reason of a failure to comply with this rule.
>
> (2) No application shall be defeated on a technicality or for want of form that does not affect the substance of the application.

36. Taking into account the provisions of Order 51 Rule 10 of the *Civil Procedure Rules* as well as Article 159[2][d] of the *Constitution* 2010, I am not persuaded that the invocation of the provisions of *Contempt of Court Act* [which was declared unconstitutional], would render the current application incompetent or at all.

37. Arising from the provisions of the Law adverted to in the preceding paragraph[s] and coupled with Article 10[2] of the *Constitution* 2010, I am unable to agree with the finding of the court in the case of *G. O versus ACG* [2022]eKLR, which has been cited and referenced by learned counsel for the 1st and 2nd Respondents.

38. Before departing from this issue, it is also instructive to recall the succinct position of the law taken by the Supreme Court of Kenya in the case *Mwicigi & 14 others v Independent Electoral and Boundaries Commission & 5 others* (Petition 1 of 2015) [2016] KESC 2 (KLR) (Election Petitions) (26 April 2016) (Judgment), where the court discussed the issue of procedural technicality and when non-compliance will invalidate the proceedings.

39. For coherence, the court stated and held thus;

> 65. This court has on a number of occasions remarked upon the importance of rules of procedure, in the conduct of litigation. In many cases, procedure is so closely intertwined with the substance of a case, that it befits not the attribute of mere technicality. The conventional wisdom, indeed, is that procedure is the

handmaiden of justice. Where a procedural motion bears the very ingredients of just determination, and yet it is overlooked by a litigant, the court would not hesitate to declare the attendant pleadings incompetent.

66. Yet procedure, in general terms, is not an end in itself. In certain cases, insistence on a strict observance of a rule of procedure, could undermine the cause of justice. Hence the pertinence of article 159 (2) (d) of the *Constitution*, which proclaims that, "... courts and tribunals shall be guided by...[the principle that] justice shall be administered without undue regard to procedural technicalities". This provision, however, is not a panacea for all situations befitting judicial intervention; and inevitably, a significant scope for discretion devolves to the courts.

67. As an instance, there are times when the disregard of rule 33 of the Supreme Court Rules clearly undermines the Court's ability to deliver justice to all the parties in a dispute. (This is concerned with the mode of instituting appeals). In such a situation, the shield of article 159 (2) (d) will not be deployed by the Court in aid of the offending litigant. Such is, however, not the case in the instant appeal. Notwithstanding the failure to adhere to all the requirements of the Rule at the initial stages, by the appellants herein, their subsequent actions did ensure that the court was not without all the requisite documentation, for undertaking a consideration of the matter.

40. Flowing from the foregoing analysis, my answer to issue number one [1] is threefold. Firstly, the citation and reliance on the provisions of *Contempt of Court Act*, 2016 which was declared unconstitutional does not render the application incompetent or invalid.

41. Secondly, the citation and invocation of the wrong provisions of the statute are inconsequential. For good measure, the provisions of Order 51 rule 10 of the *Civil Procedure Rules* are apt and instructive.

42. Finally, it is also apposite to take cognizance of the provisions of Article 159[2][d] of the *Constitution* 2020. Suffice it to point out that the said provisions frown upon undue regard to procedural technicalities.

Issue Number 2 Whether the Applicants have established and proved willful act[s] of disobedience of lawful court orders or otherwise.

43. It is common ground that the Plaintiffs/Applicants and the 1st and 2nd Defendant entered into a consent wherein the dispute beforehand was compromised. For good measure, the terms of the consent which were adopted and ratified by the court on the 14th March 2024 were elaborate/comprehensive.

44. For ease of appreciation, it suffices to reproduce verbatim the terms of the consent under reference.

45. Same are reproduced as hereunder;

(i) That the suit and the Application be and are hereby marked as compromised and settled on terms:-

(a) That the Plaintiffs and the 1st and 2nd Defendants/Respondents and in particular the Board of Management of the Corporation be and are hereby ordered and directed to convene and hold the Annual General Meeting of the Board of Management and the same to be convened/held within 38 days from the date hereof.

(b) THAT nevertheless and prior to the convention of the Annual General Meeting, the 1st and 2nd Defendants/Respondents on behalf of the Board of Management of the Corporation shall cause and facilitate the registration of the Plaintiffs as shareholders/ members of the corporation and the intended registration shall be undertaken/ facilitated within 14 days from the date hereof.

(c) That furthermore, the Board of Management shall issue and serve a notice to convene the Annual General Meeting and the same to be served 21 days before the convened General Meeting.

(d) That the Parties here shall ensure that all the issues touching on and concerning the affairs of the Management Corporation are dealt with and deliberated upon during the Annual General Meeting to be heId in terms of clause 2 hereof.

(e) That further and in any event, the 1st and 2nd Defendants/Respondents and the Plaintiffs; shall tender accounts as pertains to all the monies that have been received by the same for and on behalf of the Management Corporation.

(f) That upon the holding up of the Annual General Meeting of the Corporation, the members herein hereby covenant to respect and adhere to the resolutions of the General Meeting.

(g) That the Ist and 2nd Defendants shall continue to run the affairs of the Board of the Corporation during the intervening period up to and until the holding of the Annual General Meeting to be held within 38 days from the date hereof.

(h) That be that as it may, the 1st and 2nd Defendants herein shall account to the general membership as pertains to the affairs of the corporation during the convened and scheduled Annual General Meeting (AGM).

(i) That each party shall bear own costs of the suit/proceedings.

(j) That either party is at liberty to apply and when (when) deemed appropriate.

46. From the terms of the consent [whose details have been reproduced in the preceding paragraphs], there is no gainsaying that both the Plaintiffs/Applicants and the 1st and 2nd Defendants/Respondents understood the meaning and import of what was agreed upon.

47. Furthermore, there is no gainsaying that the 1st and 2nd Defendants/Respondents were obligated to undertake various actions in an endeavour to facilitate the convention and the holding of the annual general meeting of the management corporation. Pertinently, the convention of the annual general meeting of the corporation can only be instigated by the board members of the management corporation.

48. To my mind, it was incumbent upon the 1st and 2nd Defendants to facilitate and ensure compliance with limbs 2, 3 and 4 of the consent. However, there is no gainsaying that up to and including to date, the 1st and 2nd Respondents have not complied with the said terms.

49. At any rate, learned counsel for the 1st and 2nd Respondents has not contended that the 1st and 2nd Respondents have endeavoured to comply with the various terms of the consent order. To the contrary, what I hear learned counsel for the 1st and 2nd Respondents to be contending is that it behoved the Plaintiffs/Applicants to tender accounts for the monies that were received by same [Applicants] before the annual general meeting of the corporation can be convened.

50. Other than the foregoing, learned counsel for the 1st and 2nd Respondents has also cited and referenced regulation 24 [2][h] of the *Sectional Properties Regulation* Bylaws and contended that it is a mandatory requirement that the audited account be presented during the annual general meeting.

51. To my mind, the arguments that have been raised and adverted to by learned counsel for the 1st and 2nd Respondents fall in the category of what can easily be described as hair splitting arguments. Instructively, a proper reading of Regulation 24[2][h] of the *Sectional Properties Regulation* Bylaws would have driven learned counsel to appreciate that the presentation of the audited account is to be presented as far as practicable. In any event, if there is any impediment to the presentation, such an impediment is to be tendered and accounted for.

52. Other than the foregoing, if the 1st and 2nd Respondents are convicted in their belief that the failure by the Plaintiffs to account for the monies that were received by same [Plaintiffs/Applicants] constitutes an impediment to the holding of an annual general meeting in accordance with the orders of the court, then it behoves the 1st and 2nd Respondents to revert to court and seek variation of the court orders.

53. To my mind, the 1st and 2nd Respondents who are the board members of the management corporation and thus chargeable with the mandate to convene the annual general meeting, cannot disregard and/ or ignore the clear terms of the court order with a licentious abandon.

54. Quite clearly, the terms of the court order were clear and devoid of ambiguity. To this end, it behoves the 1st and 2nd Respondents to comply with and or adhere thereto and if there was any difficulty, to revert to court. Other than the foregoing, it was/is not open for the 1st and 2nd Respondents to disregard the orders of the court.

55. Suffice it to posit, that every subject, the 1st and 2nd Respondents not excepted, have an unqualified obligation to comply with and adhere to court orders. For good measure, the unqualified and mandatory nature of the obligation is such that the court orders must be respected even where the subject believes that the orders are irregular or illegal.

56. To underscore the uncompromising/ peremptory nature of the obligation to obey court orders, it suffices to cite and reference the decision of the court in the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 others* [2013] eKLR, where the court stated and held thus;

> 38 The reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed.
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> 39. . A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.

57. Similarly, the court in the case of *Shimmers Plaza Limited v National Bank of Kenya Limited* (Civil Appeal 33 of 2012) [2015] KECA 945 (KLR) (Civ) (18 February 2015) (Ruling); stated and held thus;

It cannot be gainsaid that the duty to obey the law by all individuals and institutions is paramount in the maintenance of the rule of law, good order and the due administration of justice.

As stated by Romer, L.J. In *Hadkinson v Hadkinson*, (1952) ALL ER 567,

> " It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. Lord Cottenham, L.C., said in *Chuck v Cremer* (1) (1 Coop. temp.Cott 342):
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> "A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid- whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it exists it must not be disobeyed."

Further, this Court in *Refrigeration and Kitchen Utensils Ltd. v Gulabchand Popatlal Shah & Another*, -Civil Application No.39 of 1990 held,

> " ... It is essential for the maintenance of the rule of law and good order that the authority and dignity of our courts is upheld at all times."
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> The above pronouncements of law ring true now as they did over sixty years ago when they were made in Hadkinson's case. Unfortunately what we have now is persons both ordinary mortals and persons in authority treating Court orders with unbridled contempt with blatant impunity.

58. Arising from the ratio decidendi in the decision [supra], there is no gainsaying that the 1st and 2nd Respondents were obliged to comply with and adhere to the clear terms of the court order. Pertinently, the arguments being raised by the 1st and 2nd Respondents, are such that the 1st and 2nd Respondents imagine that same [1st and 2nd Respondents] can resort to semantics to circumvent and defeat the clear terms of the court order.

59. In my humble view, there is no debate as pertains to what the 1st and 2nd Respondents were called upon to do. In any event, if the 1st and 2nd Respondents encountered any difficulty, then the answer to such difficulty; if any, does not domicile in willful disobedience of the court orders.

60. As pertains to the standard of proof, it suffices to state and underscore that contempt or willful disobedience of lawful court orders is a quasi-criminal offense. In this regard, the standard of proof is thus beyond the balance of probabilities. However, the standard does not reach to the level of beyond reasonable doubt, which standard squarely belongs to criminal law and not otherwise.

61. To this end, it suffices to reference the decision of the Supreme Court of Kenya in the case of *Republic v Ahmad Abolfathi Mohammed & Sayeed Mansour Mousavi* (Criminal Application 2 of 2018) [2018] KESC 51 (KLR) (Crim) (23 April 2018) (Ruling), where the court stated and observed as hereunder;

> (28) It is, therefore, evident that not only do contemnors demean the integrity and authority of Courts, but they also deride the rule of law. This must not be allowed to happen. We are also conscious of the standard of proof in contempt matters. The standard of proof in cases

of contempt of Court is well established. In the case of *Mutitika v. Baharini Farm Limited* [1985] KLR 229, 234 the Court of Appeal held that:

"In our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature."

(29) The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor's conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the Court Order.

62. In my humble view, the 1st and 2nd Respondents were not only knowledgeable of the terms of the court order, but same also had the ability/ capacity to comply. Nevertheless, the 1st and 2nd Respondents disregarded the obligations to comply with the terms of the court order and thus exposed same to citation.

63. Such endeavours cannot be countenanced by a conscientious court of law.

Final Disposition:

64. Flowing from the discourse [details highlighted in the body of the ruling], it must have become crystal clear that the application dated the 23rd April 2024, is meritorious.

65. Consequently and in the premises, the final orders that commend themselves to the court are as hereunder;

i. The application dated the 23rd April 2024 be and is hereby allowed.

ii. There be and is hereby issued an order freezing and restricting transaction in respect of accounts number[s] 011506501xxxxx, 011506501xxxxx and 0115065018xxxxxall belonging to Green Gardens Management Company Ltd and held at the Co-operative bank until after the convention of the Annual General Meeting of Green Gardens Management Company Ltd.

iii. The 3rd Defendant be and is hereby ordered and directed to facilitate and ensure that the Plaintiffs names are reinstated to the register of the management Company as shareholders/ members of Green Gardens Management Company Ltd.

iv. The reinstatement of the names of the Plaintiffs in terms of clause [iii] shall be undertaken within 21 days from the date of service of the order hereof.

v. Pursuant to and upon the reinstatement and restoration of the names of the Plaintiffs to the register of shareholders of Green gardens Management Company Ltd in terms [iii] and [iv], the Plaintiff shall be at liberty to call for and convene the annual general meeting of the Green Garden management Company Ltd subject to issuance of the requisite notice giving not less that 21 days notice prior to the holding of the intended annual general meeting.

vi. The resolutions arising from the convened annual general meeting of Green Gardens Management Company Ltd shall thereafter be transmitted to the registrar of companies for purposes of appropriate action and registration.

vii. The 1st and 2nd Defendants/Respondents herein be and and are hereby found guilty of contempt/willful disobedience of lawful court orders issued on the 14th March 2024.

viii. Consequently, the 1st and 2nd Defendants/Respondents shall attend court personally on a date to be scheduled, for purposes of mitigation and sentencing, where appropriate.

ix. To avert further delay, the date for mitigation and sentence shall not be latter than 30 days from the date of the delivery of the ruling hereof [subject to the provisions of Order 50 of the *Civil Procedure Rules* 2010.

x. The costs of the Application shall be borne by the 1st and 2nd Defendants/Respondents.

66. It is so ordered.

DATED, SIGNED AND DELIVERED ON THE 13TH DAY OF DECEMBER 2024

OGUTTU MBOYA,

JUDGE.

In the presence of:

Benson – Court Assistant.

Mr. Webale for the Plaintiffs/Applicants.

Mr. Eric Jumba for the 1st and 2nd Defendants/Respondents.

N/A for the 3rd Defendant/Respondent.

N/A for the 4th Defendant/Respondent.