



**Mzee v Naku Modern Feeds Limited (Miscellaneous Application
E305 of 2011) [2025] KEHC 3887 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3887 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION E305 OF 2011
HI ONG'UDI, J
MARCH 27, 2025**

BETWEEN

AGNES WANGECI MZEE APPLICANT

AND

NAKU MODERN FEEDS LIMITED RESPONDENT

RULING

1. The applicant filed a Notice of Motion dated 16th September 2024 under Article 159 (2) of Constitution of Kenya, Section 10 of the [Contempt of Court Act](#) 2016, Order 40 rule 3 and 4 of the Civil Procedure Rules they prayed for the following orders; -
 - i. Spent.
 - ii. That the corporate veil of the respondent company Naku Modern Feeds Ltd be lifted and its director William Njoroge Karanja be held personally liable for the contempt of court committed by the company.
 - iii. That the director, William Njoroge Karanja, be found in contempt of court for wilful disobedience of the Tribunal's orders issued on 19th July 2024.
 - iv. That the said director, William Njoroge Karanja, be committed to civil jail for a period of six months or such other duration as this honourable court may deem fit for his continued defiance of the orders.
 - v. That the costs of this application be borne by the respondent/landlord and its director.
2. The application is supported by the grounds on its face and the affidavit sworn by the applicant on even date. She deponed that Hon. Patricia May of the Business Premises and Rent Tribunal, delivered the ruling dated 19th July 2024 in the presence of the parties herein. In the said ruling the orders were that she resumes occupation of the business premises known as C04 and B114 situate at Nakuru Press



- Building, Kenyatta and enjoy the premises peacefully, pending the hearing and determination of the matter.
3. She further deponed that her attempts to enter the premises had been futile and the respondent/landlord was deliberately defying the orders. That unless the corporate veil is lifted, and its director, William Karanja Njoroge, is personally cited for contempt, the authority of the Tribunal will be undermined, and the orders rendered ineffective.
 4. The respondent/landlord in response filed a replying affidavit sworn on 24th September 2024 by its director one William Njoroge Karanja. He deponed that the ruling issued by the Tribunal on the 19th July 2024 had been challenged by the application dated the 11th September 2024 seeking review orders. Further, that the said application was scheduled for inter-parties hearing before Hon. Patricia May on the 1st October 2024. Thus, the applicant/tenant's application was premature and brought in the effort to sabotage their application for review.
 5. He denied having used the company to frustrate the applicant/tenant from accessing the premises and that it was her who had deserted the said premises for a period exceeding sixty days (60) days. Thus, they believed she longer wished to enjoy tenancy of the said premises and had leased it to another tenant. He further deponed that other than the issue of jurisdiction of the Tribunal in issuing its orders of the 19th July 2024, there were serious issues raised by the respondent/landlord in its application for review. He added that the applicant/tenant's application for contempt of court orders ought to have been raised before the court/tribunal which issued the said orders in the first instance.
 6. To further support the averments in its replying affidavit the respondent/landlord filed a supplementary affidavit sworn by its director on 28th November 2024.
 7. The application was canvassed by way of written submissions.

Applicant/Tenant's submissions

8. These were filed by Abuya M. & Associates Advocates on 30th January, 2024. Counsel gave a brief background of the case and identified five (5) issues for determination.
9. The first issue is whether the respondent/landlord was aware of the BPRT orders. Counsel submitted that the respondent/landlord was aware of the orders since the ruling was delivered in the presence of its counsel. Thus, service of the orders upon it was unnecessary.
10. The second issue is whether the respondent/landlord breached the BPRT orders. Counsel submitted that respondent/landlord had blatantly disobeyed the orders issued on 16th July 2024 by denying the applicant/tenant entry into the premises and denying her quiet enjoyment of the premises.
11. On the third issue on whether the respondent/landlord was in contempt of court, counsel submitted that the respondent's conduct constituted a wilful disobedience of court orders amounting to contempt. He placed reliance on the decision in *Mutitika v Baharini Farm Ltd* [1985] KLR 227, where the court of appeal held that contempt of court was conduct that defied or disrespected the authority of the court, and once a valid order was brought to the attention of the alleged contemnor, he/she is bound to comply. He added that the respondent/landlord had offered no plausible explanation for its actions, demonstrating clear intent to undermine the authority of the Tribunal and this court.
12. On the fourth issue on whether the corporate veil should be lifted, counsel submitted that by holding the director personally liable would ensure accountability and compliance with court orders. He placed reliance on the decision in *Jones v Lipman* [1962] 1 WLR 832, where the court held that the corporate veil could be lifted where the company was a mere facade concealing the true facts.



13. On the last issue, counsel submitted on the reliefs sought by the applicant/tenant and urged the court to also award her costs of the application.

Respondent/Landlord's submissions

14. These are dated 17th February 2025 and were filed by Sheth & Wathigo Advocates. Counsel gave brief facts of the case and identified two (2) issues for determination.
15. On the first issue, counsel submitted that the respondent /landlord was not liable for contempt of court orders issued in the Business Premises and Rent Tribunal on the 19th July 2024. Further, that respondent/landlord did not in any way deliberately disobey the tribunal's ruling of 19th July 2019 as the same did not in any way seek reinstatement of the applicant/tenant to the either stall number C04 or B114 and at no time was she evicted. He added that the order issued therein was one injuncting the respondent/landlord from evicting or removing the applicant from her business premises being stall no. C04 which she had already voluntarily vacated. Thus, the said orders were overtaken by events.
16. The court's attention was drawn to two decisions including Sheila Cassatt Issenberg & Another V Antony Machatha Kinyanjui [2021] eKLR where the court made reference to Cromwell J, writing for the Supreme of Canada in Carey v Laiken, 2015 SCC 17 (16th April 2015), which expounded on the three elements of civil contempt of court which must be established to the satisfaction of the court as follows:
- i) The order alleged to have been breached “must state clearly and unequivocally what should and should not be done.” This ensures that a party will not be found in contempt where an order is unclear. An order may be found to be unclear if, for example, it is missing an essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning
 - ii) The party alleged to have breached the order must have had actual knowledge of it. It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the willful blindness doctrine.
 - iii) The party alleged to be in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels. (emphasis)”
17. On the second issue on whether or not the applicant/tenant is merited in its prayers for lifting the veil of incorporation, counsel submitted that he was not entitled to the said prayer as the requisites for grant of such orders had not been established. He urged the court to be guided by the decision in Jepkemoi V Zaburi Enterprises *Company Ltd & 2 Others Miscellaneous Civil Application 43 Of 2023 2024* KEHC 2343 KLR 8 March 2024 (Ruling), regarding the circumstances under which the corporate veil may be lifted. He made reference to Halsbury's Laws of England 4th Edition, Vol. 7 (1), Paragraph 90 which states as follows: -

“Notwithstanding the effect of a company's incorporation, in some cases the court will ‘pierce the corporate veil’ in order to enable it to do justice by treating a particular company, for the purpose of the litigation before it, as identical with the person or persons who control that company. This will be done not only where there is fraud or improper conduct but in all cases where the character of the company, or the nature of the persons who control it, is a relevant feature. In such case the court will go behind the mere status of the company as



a separate legal entity distinct from its shareholders, and will consider who are the persons, as shareholders or even as agents, directing and controlling the activities of the company. However, where this is not the position, even though an individual's connection with a company may cause a transaction with that company to be subjected to strict scrutiny, the corporate veil will not be pierced”.

18. Lastly, he urged the court to dismiss the applicant/tenant’s application with costs to the respondent/landlord.

Analysis and determination

19. I have considered the application herein, affidavits and the submissions by the parties. In my humble opinion the issue arising for determination is whether the applicant/tenant has made out a case for issuance of contempt orders against the respondent/landlord.

20. Before delving into the merits of the application it is important to establish whether this court has jurisdiction to determine the present application or the same ought to be determined by the Tribunal that issued the said orders. The respondent/landlord in its submissions argued that the applicant/tenant ought to have filed his application before the Tribunal. In the case of the Owners and Masters of the Motor Tugs “Barbara” and “Steve” (2007 eKLR it was held at page 7/15 as follows;

“ the question of jurisdiction raised in the circumstances such as those existing in the present appeal, is a threshold issue and must be determined by a Judge at the threshold stage, using such evidence as may be placed before him by the parties Nyarangi J.A graphically put it thus:-

“.....i think it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized.....of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything, without it, a court has no power to make one more step. Where a court has no jurisdiction, there could be no basis for a continuation of proceedings pending other evidence. A court of Law down (sic) tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.....”.

21. Further, in the case of Samuel Kamau Macharia & Another- vs-. Kenya Commercial Bank Limited & 2 others (2012) eKLR, the Supreme Court of Kenya had the following to say at paragraph 68 on the question of jurisdiction: -

“ A court’s jurisdiction flows from either *the constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.....the issue as to whether a court of law has jurisdiction to entertain a matter before it is not one of mere procedural technicality, it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings”.

22. The Tribunal’s jurisdiction is clearly defined under section 12 of Cap. 301, Laws of Kenya and section 12 (2) thereof states as follows:-

“ A Tribunal shall not have or exercise any jurisdiction in any criminal matter or entertain any criminal proceedings for any offence whether under this Act or otherwise”.



23. It is trite Law that contempt of court is a quasi-criminal offence and thus the Tribunal by dint of the above section of the law cannot entertain such proceedings. Further, Section 5 of the Judicature Act, Cap. 8 Laws of Kenya confers jurisdiction to punish for contempt of court upon the High Court and the Court of Appeal even where enforcement of orders of subordinate courts created under Article 169 of the Constitution of Kenya, 2010 is in issue.
24. In Aloise Chweya Obaga v Ouru Power Limited & 2 Others [2017] eKLR at paragraph 17 it was held as follows: -
- “Therefore, the law that governs contempt of court proceedings is the English law applicable in England at the time the alleged contempt is committed. Section 5 of the Judicature Act imposes a duty on the High Court, the Court of Appeal and law practitioners to ascertain the applicable law of contempt in the High Court of Justice in England at the time the application is brought”.
25. I therefore find that this court has jurisdiction to deal with this application.
26. Having found as above this court shall now proceed to deal with the application for contempt of court on merit. Contempt of court definition according to the Black’s Law Dictionary is as follows;
- “Contempt is a disregard of, disobedience to, the rules or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body”
27. The High Court in the case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR discussed the applicable law on contempt of court as follows: -
- “It is an established principle of law 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.”
28. The court in the aforementioned case proceeded to quote with approval the learned authors of the book; Contempt in Modern New Zealand as follows: -
- “There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that: -
- The terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- The defendant had knowledge of or proper notice of the terms of the order;
- The defendant has acted in breach of the terms of the order;
- The defendant’s conduct was deliberate.”
29. These four elements must be proved to make a case for civil contempt. Although where the proceedings are civil in nature, it is well established that the degree of proof is almost that of beyond reasonable doubt but definitely higher than on balance of probability. This was discussed in the locus classicus



of Mutitika vs Baharini Farm, Civil Application No. NAI 24 of 1985 (1985) eKLR, where the Court of Appeal held that:-

“....A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily proved... The guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge...The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of judges to see whether there is no other mode which is not open to the objection of arbitrariness, and which can be brought to bear upon the subject.”

30. There is no doubt that the orders in the ruling dated 19th July 2024 allegedly disobeyed by the respondent/landlord were issued by Hon. Patricia May of the Business Premises and Rent Tribunal (BPRT). The said orders were as follows;
- i. The tenant is allowed to remain in the demised premises pending the hearing and determination of the reference.
 - ii. The parties to file and exchange paginated bundle of documents which they seek to rely on including updated statements of accounts within 7 days.
 - iii. The tenant to pay the uncontested rent arrears within 21 days upon receipt of the statement of accounts.
 - iv. Each party to bear their own costs.
31. The applicant contends that pursuant to the said orders she was to resume occupation of the business premises known as C04 and B114. However, her attempts to enter the premises had been futile and the respondent/landlord was deliberately defying the orders issued. On its part, the respondent/landlord's director argued that he had not prevented the applicant/tenant from accessing the said premises and that it was her who had deserted the premises for a period exceeding sixty days (60) days. Thus, they had leased it to another tenant.
32. Having carefully looked at the court record, I note that the orders said to have been disobeyed were issued in the presence of the respondent/landlord's counsel and in the absence of the applicant/tenant. Considering the four elements set out hereinabove, it is my view that the terms of the order were clear, the respondent/landlord having been present in court had knowledge of the order, but instead went ahead denied the applicant/tenant access to the business premises and even admitted to have leased it to another tenant. The applicant/tenant attached photographs of the said premises locked with padlocks confirming that what she was saying was the truth. The respondent/landlord did not adduce any evidence to the contrary.
33. Further, in its submissions the respondent/landlord confirmed that the application for review of the said orders had been dismissed. Thus, there is no doubt that the respondent/landlord acted in breach of the terms of the said orders of 19th July 2024. Furthermore, its conduct was deliberate since it went ahead to lease the said business premises to another tenant. In *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR where the Court of Appeal held:

“We reiterate here 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. We think we have said enough to send this important message across.”

34. The next issue is on whether the corporate veil should be lifted and the director of the respondent/ landlord be held personally liable for the said contempt. In *Riccatti Business College of East Africa Limited v Kyanzavi Farmers Company Limited* [2016] eKLR the Court of Appeal held that;

“The Court may lift the corporate veil in exercising its inherent jurisdiction to do justice and fairness for the ends of justice. This jurisdiction may be exercised only in special circumstances where the Court finds improper conduct, fraud or when a company is a sham, acting as an agent of the shareholders or evading tax revenues.”

35. It has been repeated time and time again that the courts should not fold their hands and watch helplessly as their orders are disobeyed with impunity. This would be an abdication of its sacrosanct duty of protecting the dignity and authority of the court which duty is bestowed upon it by *the Constitution*. That in itself promotes the rule of law, enhances public confidence on the justice system and protects the interest of parties before the court.

36. This court is satisfied that the ends of justice can only be served if the corporate veil is lifted and the respondent/ landlord’s director be held personally liable for disobeying the orders of the Tribunal. It is pointless for persons to hide behind the corporate veil while not doing what they ought to do. The respondent company is run by the said director and it is therefore crucial for him to be held liable for being in contempt of the orders of the Tribunal issued on 19th July, 2024 which have not been set aside or reviewed.

37. I hereby lift the veil of incorporation and find the director of the respondent/landlord guilty of contempt of court and he shall be punished accordingly.

38. Orders accordingly.

DELIVERED VIRTUALLY DATED AND SIGNED THIS 27TH DAY OF MARCH, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG’UDI

JUDGE

