



Shekh & another v Osman & 4 others (Miscellaneous Civil Application E1022 of 2024) [2025] KEHC 3962 (KLR) (Civ) (27 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3962 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E1022 OF 2024**

**TW OUYA, J
MARCH 27, 2025**

BETWEEN

ABDULLAH MOHAMED SHEKH 1ST APPLICANT

HUSSEIN ABDULLAHI ABDI 2ND APPLICANT

AND

HAMUD MOHAMED OSMAN 1ST RESPONDENT

ROSE NDINDA NDETO 2ND RESPONDENT

RONALD NGALA MWANIA 3RD RESPONDENT

PETER NZIOKI MWANIA 4TH RESPONDENT

SHADRACK MUTUKU KITHUKU 5TH RESPONDENT

RULING

Background

1. For determination is the motion dated 06/11/2024 filed by Abdullah Mohamed Shekh and Hussein Abdullahi Abdi (hereinafter the 1st & 2nd Applicant/Applicants) as against Hamud Mohamed Osman, Rose Ndinda Ndeto, Ronald Ngala Mwanja, Peter Nzioki Mwanja and Shadrack Mutuku Kithuku (hereinafter the 1st, 2nd, 3rd, 4th & 5th Respondent/Respondents) seeking inter alia
 1. Spent.
 2. That an order be issued to have the Respondents cited for contempt for disobeying the order given on 30/11/2021;



3. That summons be issued against the Respondents to appear before Court and show cause why they should not be committed to civil jail for such terms as the Court may deem just;
 4. That the Respondents be cited for contempt of Court and fined a sum of at least Kshs. 35,000,000/- and that the Court do make any such order for purpose of enforcing the permanent injunction issued by the Tribunal;
 5. That the Respondent to pay damages;
 6. That the OCS Eastleigh North Police Station OCPD Ruaraka Nairobi Area to maintain peace; that the construction that is going on to be stopped until the matter is heard and determined by the Court; and
 7. That any other order(s) which the honorable Court shall be pleased to give.
2. The motion is expressed to be brought among others pursuant to Contempt of Court Act, Section 1A & 3A of the Civil Procedure Act (CPA) and Section 5 of the Judicature Act and premised on the grounds on its face, as amplified in the supporting affidavit sworn by the 1st Applicant. The gist of his deposition is that the Business Premises Rent Tribunal (BPRT) (hereinafter the tribunal) on 30/11/2021 issued an order restraining the Respondents from interfering with their occupation of premises on LR. No. 36/11/1018 Eastleigh Section III, 7th Street (hereinafter suit premises) whereafter the said order was served upon the Respondents on the same day. That notwithstanding the presence of police from Pangani Police Station as ordered by the tribunal, the Respondents still ignored the Court order and proceeded to demolish the said suit premises. He goes on to depose that by virtue of Respondents action, the Applicants have suffered loss and damage for goods and those of other tenants destroyed. He surmises that on accord of the forestated, the Respondents ought to be punished for contempt.
 3. Despite service of the motion upon the Respondents, they did not participate in the instant proceedings. That said, the Applicants motion was disposed of by way of their 1st Applicant's affidavit material on record.

Disposition

4. The Court has considered the Applicants motion together with the affidavit material in support. Alongside Section 1A & 3A of the CPA and Section 5 of the Judicature Act, the Applicants motion has equally cited various provisions of the Contempt of Court Act despite the fact that the latter statute was declared unconstitutional in the case of Kenya Human Rights Commission v Attorney General & another [2018] eKLR. That said, Section 3A of the CPA reserves the inherent power of the Court “to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the Court”. The purport of the latter provision was addressed by the Court of Appeal in Rose Njoki King'au & Another v Shaba Trustees Limited & Another [2018] eKLR wherein it was observed that;

“Also cited was Section 3A of the Civil Procedure Act which enshrines the inherent power of the Court to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the Court. In Equity Bank Ltd v West Link Mbo Limited [2013], eKLR, Musinga, JA stated inter alia, that, by “inherent power” it means that:

“Courts of law exist to administer justice and in so doing, they must of necessity balance between competing rights and interests of different parties but within the confines of law, to ensure that the ends of justice are met. Inherent power is the authority possessed by a Court implicitly without its being derived from the Constitution or statute. Such power enables the judiciary to deliver on their



constitutional mandate.....inherent power is therefore the natural or essential power conferred upon the court irrespective of any conferment of discretion.”

The Supreme Court went further in *Board of Governors, Moi High School Kabarak & Anor v Malolm Bell* [2013] eKLR, to add the following: -

“Inherent powers are endowments to the court as will enable it to remain standing as a constitutional authority and to ensure its internal mechanisms are functional. It includes such powers as enable the Court to regulate its intended conduct, to safeguard itself against contemplation or descriptive intrusion from elsewhere and to ensure that its mode of disclosure or duty is consumable, fair and just.” (sic)

5. Arising from the declaration of unconstitutionality of the *Contempt of Court Act*, ordinarily applications for contempt are brought pursuant to Section 5 of the *Judicature Act* as read with 3A of the CPA. Section 5 of the *Judicature Act* provides that; -

“(1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and such power shall extend to upholding the authority and dignity of subordinate courts.

(2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.”

6. Black’s Law Dictionary (Ninth Edition), defines contempt of court as “conduct that defies the authority or dignity of a court.” The Court of Appeal in *Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 Others* [2014] eKLR held that in punishing contempt, the Court exercises ordinary criminal jurisdiction. In *Stewart Robertson v Her Majesty’s Advocate*, 2007 HCAC 63 it was stated that:

“Contempt of Court is constituted by conduct that denotes willful defiance of or disrespect towards the Court or that willfully challenges or affronts the authority of the Court or the supremacy of the law, whether in civil or criminal proceedings.”

7. With the above in reserve, before addressing the crux of the motion, this Court must address itself to the competency of the application before it and or whether the Court is endowed with jurisdiction to entertain the motion as presented. It is trite that jurisdiction attaches at the root of a Court’s discretion to entertain proceedings before it. The famous words of Nyarangi. JA (as he then was) in the locus classicus case of *Owners of the Motor Vessel “Lillian S”* still ring true and require no restatement only to reiterate that “.....jurisdiction is everything. Without it, a court has no power to make one more step.....” Further, as held in *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR 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.

8. Why do I digress on the question of jurisdiction? Here, it is undisputed that Applicants motion that seeks among other orders a finding of contempt as against the Respondents, which is premised on an order issued by tribunal on 30/11/2021 in favour of the Applicants as Tenants and as against the Respondents as Landlords. (See Annexure AMS-1).

9. The Court of Appeal in *Mutitika v. Baharini Farm Limited* [1985] KLR 229 - 234 as cited with approval in the of-cited Supreme Court Case *Ahmad Abolfathi Mohammed*, on contempt,



purposefully observed that contempt of Court proceedings are quasi-criminal proceedings in nature. That said, by dint of Section 12(2) of the Landlord and Tenant (Shop, Hotels and Catering Establishments) Act, to wit, the tribunal's establishment and jurisdiction is anchored on, the tribunal is ousted of exercising any jurisdiction in any criminal matter or to entertain any criminal proceedings for any offence whether under the Landlord and Tenant (Shop, Hotels and Catering Establishments) Act or otherwise.

10. Nevertheless, to construe the true intent of statute or legislation, the Court of Appeal in *Engineers Boards of Kenya v Jesse Waweru Wahome & others & 5 others* [2015] eKLR, laconically acknowledged that.....“It is our view that there is also the need to give a statute a holistic reading and interpretation in order to ascertain the true legislative intent.” Therefore, alongside Section 12(2) the Court must equally read Section 15(1) of the Act, which provides that appeals from the decision of the Tribunal lie with the Environment and Land Court.
11. It would appear that the legislative intent of the Landlord and Tenant (Shop, Hotels and Catering Establishments) Act as read with Article 162(2) of *the Constitution*, would be that Environment and Land Court exercise appellate and or supervisory jurisdiction over the tribunal in respect of appeals and or any orders emanating therefrom. It further warrants reminder that the Environment and Land Court by reading of Section 3A of the CPA, Section 5 of the *Judicature Act* as read with Section 29 of the *Environment and Land Court Act* is endowed with jurisdiction to punish conduct that defies the authority or dignity of a Court. Indubitably, the forestated would translate that whereas the tribunal would be ousted of jurisdiction to entertain contempt proceedings by dint do Section 12(2) of the Landlord and Tenant (Shop, Hotels and Catering Establishments) Act by virtue of Section 15(1) of the Act as read alongside Article 162(2) of *the Constitution* and Section 29 of the *Environment and Land Court Act*, the Environment and Land Court would be the appropriate Court to entertain the Applicants motion.

Determination

12. Consequently, without belabor further on the issue, given the origin of the cause action emanating from the Business Premises and Rent Tribunal and the totality of the above deduction, this Court reasonably beliefs that is not vested with jurisdiction to entertain the instant motion. The same is accordingly struck out with no orders as to costs, on accord of the Respondents lack of participation in the instant proceedings.
13. Orders Accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27th DAY OF MARCH, 2025.

HON. T. W. OUYA

JUDGE

For Appellant.....Otieno Hb Maosa

For Respondents.....no Appearance

Court Assistant.....Jackline

