Cooperative Bank of Kenya Ltd v Gituma (Environment and Land Appeal E021 of 2024) [2025] KEELC 4811 (KLR) (16 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4811 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT AND LAND APPEAL E021 OF 2024

JO MBOYA, J

JUNE 16, 2025

BETWEEN

COOPERATIVE BANK OF KENYA LTD ..... APPELLANT

AND

GOERGE MUGAMBI GITUMA ..... RESPONDENT

RULING

1. The Respondent [hereinafter referred to as the contemnor] has been brought before the court pursuant to a warrant of arrest.

2. Having been brought before the court pursuant to a warrant of arrest, the contemnor was obliged to offer mitigation [show cause] in accordance with the law.

3. Suffice it to posit that the contemnor has indeed appropriated his right to mitigation and the mitigation by the contemnor forms part of the record of the court.

4. Furthermore, in the course of the mitigation, the learned counsel raised various issues pertaining to the propriety of the orders of contempt. In addition, the contemnor has also alluded to the fact that the orders of contempt were made without his knowledge. Moreover, the contemnor has also indicated that the orders of contempt were not served upon him.

5. Arising from the foregoing, the contemnor has implored the court to exercise its discretion and to cancel the warrant of arrest. Nevertheless, there is no gainsaying that the warrants of arrest that the contemnor is referencing before the court are spent. Same ceased to be in force upon the arrest of the Contemnor.

6. Be that as it may, I wish to observe that while making his submissions, the contemnor herein intimated to the court that same availed and/or presented himself to the court voluntarily. However, the truth of the matter is that the contemnor was brought to court under arrest by the DCI.

7. Furthermore, when the true circumstances as pertaining to the manner in which the contemnor was brought to court were placed to the contemnor, the same could not be able to deny.

8. What becomes so apparent is that the contemnor chose to mislead the court in an endeavor to procure the sympathy of the court. This court takes the issue of perjury seriously insofar as the same constitutes an attempt to defraud and defile the cause of justice. [See the provisions of Section 114 of the *Penal Code*, Chapter 63, Laws of Kenya.]

9. Moreover, I am reminded of the dicta in the case of *Hadkison v Hadkinson* [1961] ALL ER 1169 where Lord Denning MR [as he then was] held that court orders need to be obeyed and respected. Simply put, there is an unqualified obligation to obey Court Order[s].

10. Likewise, I am privy to the holding of Lady Justice Ndolo, Judge; in *Teachers Service Commission v Kenya National Union of Teachers* [2013] where the learned Judge held that court orders are not mere suggestions.

11. I wish to adopt and reiterate the sentiments of the Learned Judge in the said case and do hereby affirm the position. Further and in any event, the Court of Appeal in the case of *Shimmers Plaza Ltd v National Bank of Kenya Ltd* [2015] were apt and succinct on the question of obedience of court orders.

12. Having duly appraised myself of the applicable law and taking into account the fact that the orders of contempt have not been discharged; and coupled with the lack of candour on the part of the Contemnor, I hereby proceed to sentence the contemnor to pay a fine of Kshs.1,000,000/= only; or in default to serve a sentence of Three [3] months in Jail.

13. For coherence, the contemnor shall only be released upon payment of fine and not otherwise. In this regard, the sentence runs forthwith.

14. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 16TH DAY OF JUNE 2025

OGUTTU MBOYA, FCIArb; CPM [MTI-EA].

JUDGE

In the presence of:

Mr. Mutuma- Court Assistant.

Mr. G. Mugambi – Advocate/Contemnor

Mr. Gitari holding brief for Mr. Kimani for the Appellant

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