



Oracle Limited v Transnational Computer Technology (Civil Appeal E574 of 2022) [2024] KEHC 9950 (KLR) (Civ) (30 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9950 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E574 OF 2022

JM NANG'EA, J

JULY 30, 2024

BETWEEN

ORACLE LIMITED APPELLANT

AND

TRANSNATIONAL COMPUTER TECHNOLOGY RESPONDENT

(Being an appeal from the ruling/ order of Chief Magistrate's Court at Nairobi (Hon. E. N. Kagoni- PM) delivered on 22nd July, 2022)

RULING

Grounds of Appeal

1. This appeal follows the above trial court's ruling on the respondent's Notice of Motion dated 28th April 2022 in which the appellant's Directors and/or Agents named David Bunei, Muthoni Nyoike, Marc J. Shanker, Simon Allison, Nitzam Shaham, Oracle Nederland B. V , Anne Waithera Kimotho, Ian Mathews and Oracle Incorporation Nominees Limited were cited for contempt of orders of that court issued on 24th September 2021. The orders issued in the respondent's application of even date were in the nature of temporary injunction directing the appellant, firstly,

“to process the discontinued due diligence exercise required for the Public Sector Addendum Certification and issue to the applicant/ plaintiff (read, respondent) the Public Sector Addendum pending hearing and determination of this application” (*sic*).

Secondly, a further temporary injunction was issued directing the appellant

“to issue a Manufacturer's Authorization Form (MAF) requested by the respondent and which is required by the National Treasury to effect payment for already performed work



and currently under consideration for payment pending hearing and determination of this application”.

The application had then been set down for hearing inter partes on 18th October 2021. The appellant is said to have disobeyed these orders by refusing to issue the respondent with the stated certification and authorization leading to the contempt of court orders against its directors and/or agents alluded to hereinabove, which decision provoked this appeal.

2. By Memorandum of Appeal dated 28th July 2022, the appellant craves an order setting aside the said trial court’s order citing the above named persons for contempt of the stated orders of injunction. The grounds of appeal as contained in the Memorandum of Appeal may be condensed as hereunder:
 - a. That the learned trial magistrate erred in law and fact by failing to take judicial notice of the ruling of Hon. D. M. Kivuti (PM) dated 4th February 2022.
And
 - b. That the learned trial magistrate erred in law and fact by failing to consider the appellant’s evidence set out in its replying affidavit sworn by Muthoni Nyokabi thereby arriving at an erroneous decision.
3. The appellant therefore prays that the appeal be allowed with costs and the trial court’s contempt orders dated 22nd July 2022 be set aside.

Brief Background to the Appeal

4. Some history of this matter is necessary to contextualize this ruling. A reading of the record of the lower court shows that the appellant deals in information technology products and services including cloud services, enterprise software products and software support services, enterprise hardware products and hardware support services. Among its clients are corporate and government entities. On 29/9/2020 the appellant and the respondent entered into a distribution agreement by which the latter was permitted to distribute the former’s products to commercial customers only.
5. Purporting to exercise its contractual rights under the agreement, the appellant on 19th July 2021 notified the respondent that the distribution contract would not be renewed. Consequently, the respondent would no longer be the appellant’s business partner from 27th August 2021. The decision provoked the respondent’s suit and injunction applications in the lower court that resulted in the contempt of court orders issued on 22/7/2022.

Analysis and Determination

6. I have carefully read through the record of the trial court and written submissions filed by learned Counsel for the parties. The appellant denies being in contempt for the reason that the injunction orders alleged to have been breached had lapsed by dint of the ruling of Hon. D.M Kivuti (PM) delivered on 4th February 2022 which confirmed the ex parte injunctive reliefs granted to the respondent but limited their duration to 60 days from the date of the ruling. The respondent reacted to this ruling by filing the application dated 24 September 2021 in which similar injunction orders that are alleged to have been disobeyed by the appellant were issued.
7. The respondent in its submissions agrees with the narration of the proceedings before the lower court but maintains that the appellant is guilty of contempt of the stated court orders. The respondent makes no reference to the ruling of Hon. D. M. Kivuti (PM) aforesaid.



8. In his ruling of 22nd July 2022 subject of this appeal, Hon. E.N Kagoni (PM) faulted the appellant for failing to exhibit the said ruling of Hon. D.M Kivuti (PM) in his reply to the respondent’s contempt application. The learned trial magistrate noted as follows: “ The court needs such evidence i.e., the ruling so that it can verify what was deponed is really what Hon. D. M. Kivuti (Mr.) (PM) ruled in his ruling dated 4th February 2022. The court is curious as to why such evidence was left out and also why no explanation was given for its omission i.e, was there any challenge in acquiring the ruling in time or was the ruling unavailable from the court file?

In the absence of such ruling being provided, adverse orders have to be visited on the respondent. This is evidence which they could easily acquire, evidence which was readily accessible upon inquiry from the registry and evidence which was not out of (*sic*)” For that reason the court concluded that the appellant’s arguments were not merited and proceeded to cite its named officials for contempt.

9. The appellant, however, contends that the ruling of Hon. D.M Kivuti is part of the record of the lower court and was available for perusal for determination of the contempt application.
10. The issue for determination is whether the appellant was guilty of contempt of the court order of 24th September 2021 and therefore its officials were lawfully cited for contempt. It is common ground that the appellant did not comply with the injunction orders by issuing the stated Public Sector Certification and Manufacturer’s Authorization Form, explaining the court orders lapsed . As per Counsel submissions, it is trite law that the standard of proof in matters of contempt of court orders is above the balance of probability applying to civil cases but not beyond reasonable doubt as in criminal cases.
11. It cannot be gainsaid that disobedience of court orders seriously undermines judicial authority and the rule of law and is thus highly discouraged (see the decision in *Sam Nyamweya & 3 Others v. Kenya Premier League Limited & 2 Others* (2015) eKLR relied upon by the respondent.) This court will not hesitate to severely punish contemnors where guilt is proven. Are the appellants’ directors and/or officials guilty herein?
12. The exparte injunction orders of 24th September 2021 were issued after similar exparte orders were previously given vide the respondent’s application dated 23rd August 2021 and which orders were confirmed in Hon. D. M. Kivuti’s ruling of 4th February 2022 to subsist for 60 days from the date of the ruling. This was therefore an unpleasant situation in which two injunctive orders were irregularly issued in favour of the same party by different magistrates in the same suit. It is thus unclear which order was breached by the appellant, if at all, given that one of the orders is said to have lapsed two months after it was issued. At the time Hon. E. N. Kagoni was dealing with the application dated 24th September 2021, the earlier application dated 23rd August 2021 was pending determination and was in the court file. The Honourable magistrate could therefore have noted the fact and perhaps strike out the later application for being an abuse of the court process.
13. In the premises, the appellant’s alleged contempt has not been proven to the required legal standards. I have no hesitation in setting aside, as I hereby do, the orders of Hon. E. N. Kagoni issued on 22nd July 2022 citing the appellants for contempt. The appellant will have the costs of the appeal.

Ruling accordingly.

RULING DELIVERED VIRTUALLY THIS 30TH DAY OF JULY, 2024 IN THE PRESENCE OF :

The appellant’s advocate, Mr. Muchiri

The respondent’s advocate, Mr. Kiprono



The Court Assistant, Ruth

J. M. NANG'EA

JUDGE

