



**Metro Magnum Organization Group v Muluma Chief Executive Committee Member,  
Mobility and Works -Nairobi City County & 8 others (Miscellaneous Civil Case  
E775 of 2023) [2024] KEHC 11163 (KLR) (Civ) (25 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11163 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS CIVIL CASE E775 OF 2023  
JN MULWA, J  
SEPTEMBER 25, 2024**

**BETWEEN**

**METRO MAGNUM ORGANIZATION GROUP ..... APPLICANT**

**AND**

**BRIAN MULAMA CHIEF EXECUTIVE COMMITTEE MEMBER, MOBILITY  
AND WORKS -NAIROBI CITY COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**EVANS OGAN NYABOLO ..... 2<sup>ND</sup> RESPONDENT**

**EVANS MONARI NYAUNDI ..... 3<sup>RD</sup> RESPONDENT**

**MARTIN WAMBUGU GITHUA ..... 4<sup>TH</sup> RESPONDENT**

**GEOFFREY ODHIAMBO ACHIENG ..... 5<sup>TH</sup> RESPONDENT**

**STEVE ONCHONG'A ONGIRI ..... 6<sup>TH</sup> RESPONDENT**

**STEPHEN NYOIKE KARAYA ..... 7<sup>TH</sup> RESPONDENT**

**HON ATTORNEY GENERAL ..... 8<sup>TH</sup> RESPONDENT**

**THE HON DPP ..... 9<sup>TH</sup> RESPONDENT**

**RULING**

1. This case was filed by way of a Miscellaneous Application dated 8/09/2023.

It is captioned as a contempt application against perpetrators of Acts of interference with the administration of justice in a pending proceeding before the Transport Appeals Board Tribunal Appeal No. E 12 of 2023 before the Interested Parties.



2. The claimant is Metro Magnum Organization Group against the 1<sup>st</sup> to 9<sup>th</sup> Defendants.
3. By the Application as aforesaid, the Claimant/Applicant seeks leave of court to institute contempt proceedings against all the named defendants number 1 to 7.
4. The court orders the defendants are alleged to have disobeyed were issued by the 1<sup>st</sup> Interested Party – The Transport Appeals Board Tribunal [TLAB] in its case No E012/2013 and extended with consent of the parties, allegedly by jointly acting unlawfully to cause the claimant to cease PSV operations along Tom Mboya Street Nairobi City County. The claimant seeks costs of this application as well.
5. In support of the application, the claimant relies on its affidavit sworn on 16/06/2023 by a director of the claimant Benjamin Kimuyu Mutiso and Supplementary Affidavit sworn on 27/02/2024 and ground at its face; and annexures thereto.  
Further, the claimant has filed submissions dated 27/02/2024.
6. In response to the application the Defendants filed their Replying Affidavits as well as submissions.
7. In their responses the defendants raised issues touching on this Court’s Jurisdiction in the instance to entertain the contempt application citing the Doctrine of Exhaustion of internal dispute mechanisms under the *National Transport and Safety Authority act* (NTSA Act), Section 53 and secondary that the application does not the threshold for grant of orders of contempt of orders issued by the TLAB tribunal.
8. The parties pleadings supporting and opposing affidavits and submissions have been careful considered.

### **Jurisdiction**

9. Paragraph 5 of the Tribunal Orders in its case No. E 012/2013 restrained the Respondents by an order of Temporary injunction from;-  

“Obstructing, blocking and/or preventing the Appellant/applicant from using and accessing the PSV Passenger picking and drop off point along Tom Mboya Street and from harassing the Appellant (Metro Magnum Organization Group Limited).....”

“.....and further .... Or otherwise interfering with the PSV operations along its lawfully licensed Road service route of Tom Mboya – Mfangano – Kariokor –Gikomba - Pumwani- Eastleigh – Jogoo Road – and back”

(The parties have the full ruling in their possession)
10. The applicant states and avers that the Tribunal’s orders of temporary injunction were disobeyed by the Respondents severally and jointly by deliberately interfering with the due administration of justice in TLAB Appeal No. E012/2013 being live proceedings pending before it and scheduled for a ruling on notice. The court has not been informed by either party whether or not the ruling has been delivered or still pending.
11. It is upon the above background that the applicant approached this court for leave to bring contempt proceedings before this court while the appeal before the Tribunal is still alive.
12. Jurisdiction of the High Court to supervise subordinate courts and Tribunals or anybody exercising a judicial or quasi-judicial function is provided at Article 165 (6) of *the Constitution*.



Article 47(1) of *the Constitution* gives every person a right to administrative action that is lawful, fair, efficient and reasonable action, and Article 48 thereof access to justice for all persons.

13. It is the Respondents jointly and submissions that as the appeal is still live before the tribunal, the application is therefore Premature as the applicant ought to have exhausted the intended mechanism by the Tribunal as provided by the *National Transport and Safety Authority Act* at Section 53

14. It provides:-

“a person who without lawful excuse, contravenes any lawful direction issued by any member, officer, employer or agent of the Authority in exercise of the Powers or the performance of the functions of the Authority under this Act or willfully obstructs any member officer, employee or agent of the authority in the discharge of his lawful duties commits an offense and shall be liable on conviction to a fine of at least one hundred thousand shillings, of to imprisonment for a term not exceeding one year”

15. In that regard, it is evident that the Tribunal is empowered to enforce its own orders including to punish for contempt of its orders see Misc. Application *No. 175 of 2011* Patrick Mutune Katubi V. General Manager, Harambee Cooperative Savings & Credit Society Ltd & another [2012] eKLR Misc. Civil Appln. No. 443/2017 – Samuel M. N. Mweru & Others v. National Lands Commissions & 2 others [2020] eKLR where the courts held that disobedience of tribunal orders may be punished by the tribunals which are empowered by the various Acts to punish including disobedience of their own orders.

16. Doctrine of exhaustion is a point of law and an administrative remedy and provided by statute, in this case at Section 53 of the NTSA Act.

17. Black’s Law dictionary defines the same as:-

“Exhaustion of remedies. The doctrine that, it an administrative remedy is provided by statute, a claimant must seek first from the administrative body before the judicial relief is available. The doctrines purpose is to maintain comity between the courts and administrative agencies and to ensure that courts will not be burdened by cases in which juridical relief is unnecessary”

18. In *William Odhiambo Ramogi & 3 Other right & 2 others Muslim for Human Rights & 2 others (IP)* [2020] eKLR, the court held that:-

“The question of exhaustion of Administrative remedies arises when a litigant aggrieved by an agency’s action seeks from a court of law an action without pursuing available remedies before the agency itself. It ensures that there is postponement of Judicial Consideration of matters to ensure that a party is first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside courts”.

19. Additionally, the supreme court of Kenya in the matter of *Interim Independent Electoral Commission* [2011]eKLR rendered that:-

“.... A court may not arrogate to itself jurisdiction through craft of interpretation or by way of endeavor to discern or interpret the intentions of parliament where the wording of legislation is clear and there is ambiguity...”

See also *Samuel Kamau Macharia & Another v. Kenya Commercial Bank Ltd & 2 Others* [2012] eKLR.



20. Without further interrogation of the application before the Section 53 of the NTSA Act needs no interpretation. It is not ambiguous.
21. A litigant ought to exhaust all reliefs provided in statute before approaching the court to avoid burdening courts with matters pending before the tribunals that are empowered to deal with the reliefs sought.
22. For the foregoing, I agree with the Respondents that the Application before the court is premature and this court will not arrogate jurisdiction upon itself to consider the motion dated 8/09/2023 for whatever the court does without jurisdiction amounts to naught.
23. The court likewise declines to invoke its inherent jurisdiction to punish for contempt in the first instance without the applicant exhausting the mechanisms provided under Section 53 of the NTSA act.
24. Having made a finding that this court has no jurisdiction to entertain the application under review it follows that the second arm of the application being Leave to institute contempt of court proceedings against the 1<sup>st</sup> – 7<sup>th</sup> Respondents before this court falls by the way, and therefore the interim orders issued by this court are hereby vacated.
25. Consequently, the Application dated 8/09/2023 is struck out with costs to the 1<sup>st</sup> – 7<sup>th</sup> Respondents.  
It is so ordered.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 25<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**JANET MULWA**

**JUDGE.**

