



**Solva v National Land Commission & another (Miscellaneous Application E031 of 2022)  
[2023] KEHC 119 (KLR) (Commercial and Tax) (20 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 119 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E031 OF 2022  
A MABEYA, J  
JANUARY 20, 2023**

**BETWEEN**

**PEDRO ALEXANDRE DUARTE PEREIR SOLVA ..... APPLICANT**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**KABALE TACHE ARERO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before court is the notice of motion dated January 11, 2022. It was brought under articles 50(1), 159(c) (b), 152(2)(e), 165(3)(a) and 165(3)(e) of the Constitution, section 5 of the Judicature Act, part 81 of the England and Wales Civil Procedure Rules, sections 1A, 1B, 3 and 3A of the Civil Procedure Act, order 51 of the Civil Procedure rules 2010 and the inherent jurisdiction of the court.
2. The application sought that the National Land Commission and its accounting officer, Kabale Tache be held in contempt of the garnishee order issued on October 6, 2021 and to show cause why they should not be cited for contempt, a fine of Kshs 1,000,000/- upon the National Land Commission and that Kabale Tache Arero be committed to civil jail for six months.
3. The grounds for the application were set out on the face of it and were supported by the affidavit sworn by Pedro Alexandre Silva. The basis was that on October 6, 2021, a garnishee order was issued requiring the 1<sup>st</sup> respondent to pay the applicant Kshs 5,496,000/-. The said orders have to-date not been complied with.
4. That the 2<sup>nd</sup> respondent, being the accounting officer, had the authority to execute the garnishee order but had neglected to comply therewith. That the actions of the respondents were in contempt of the court process.



5. The respondents opposed the application through the replying affidavit sworn by Kabale Tache who is the Chief Executive Officer of the 1<sup>st</sup> respondent. He averred that the applicant wrote to him a letter demanding payment of Kshs 5,496,000 from the funds held for Midas Oil Limited. That it had already made full payment of Kshs 26,640,000/- to Midas Oil Limited on or about August 17, 2020. That in the premises, the 1<sup>st</sup> respondent did not hold any funds owed to Midas Oil Limited.
6. The application was canvassed by way of written submissions which I have considered.
7. The applicant submitted that on October 6, 2021, the court made the garnishee order absolute and service was effected upon the 1<sup>st</sup> respondent but no payment was forthcoming. That the respondents had the information concerning the funds at the time the garnishee proceedings were being undertaken but failed to raise their concerns with the court. Counsel submitted that unless the garnishee order absolute was set aside, it was the respondent's obligation to comply with the same. It was further submitted that the parties recorded a consent whereby the defendants gave an undertaking to satisfy the garnishee order absolute in 30 days. That failure to comply with the undertaking was a further breach of the order of the court
8. On their part, the respondents submitted that the garnishee order absolute was overtaken by events as the respondents had already made out the full payment to Midas Oil Ltd. That in the circumstances, the commission was left with no funds owed to the said company and was therefore not able to pay the amount demanded. That the applicant should pursue the said company for the recovery thereof.
9. I have considered the parties contestations and the submissions on record. The main issue for determination is whether the respondents are in contempt of court.
10. In *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, Ibrahim, J (as he then was), underscored the importance of obeying court orders stating: -

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.”
11. *Further, in Sam Nyamweya & others v Kenya Premier League Ltd and others* [2015] eKLR, Justice Aburili 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.”
12. In this case, it is the applicant's case is that the garnishee order nisi was issued on 15/3/2021 and made absolute on October 10, 2021 whereby the 1<sup>st</sup> respondent was required to pay the applicant Kshs 5,496,000/-. Service of the order was effected upon the 1<sup>st</sup> respondent however no payment was made. The applicant faults the respondents for failing to comply with the said order and their undertaking for payment of the said sums. It is therefore the applicant's contention that the 1<sup>st</sup> and 2<sup>nd</sup> respondent are in contempt of the orders of the court.



13. There is no dispute that a garnishee order absolute was made on October 6, 2021. The same was duly served upon the respondents. It is also not disputed that on February 24, 2022 the parties entered into a consent where the respondents undertook to satisfy that order. The respondents were aware of the orders of the court and admitted to receiving the applicant's letter demanding payment.
14. From the foregoing, it is clear that whilst the 1<sup>st</sup> respondent held monies belonging to Midas Oil Limited to the tune of Kshs 26,640,000/-, it produced evidence to show that it paid over the entire sum on August 10, 2020. By that time, neither the decree nisi nor absolute had been made. The decree nisi was made absolute nearly a year later on October 6, 2021. Surely, the orders could not have been made to apply retrospectively.
15. Accordingly, although the 1<sup>st</sup> respondent gave an undertaking in February, 2022 to settle the sum, that undertaking had no basis. The 1<sup>st</sup> respondent no longer held any funds on behalf of Midas Oil Limited. The respondents cannot then be said to have disobeyed an order which was made way after they had parted with the subject amount.
16. Accordingly, I hold that the respondents have shown why they should not be held in contempt of the court order issued on October 21, 2021.
17. As to costs, the 1<sup>st</sup> respondent misled the applicant that it would pay the money through an undertaking made on February 24, 2022. Accordingly, I order that the costs of the application shall be borne by the 1<sup>st</sup> respondent.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF JANUARY, 2023.**

**A. MABEYA, FCIArb**

**JUDGE**

