



REPUBLIC OF KENYA



**Carriers and Traders East Africa Limited v Clarkson Insurance Brokers
& another; Mshweshwe (Interested Party) (Civil Suit 307 of 2014)
[2023] KEHC 17992 (KLR) (Commercial and Tax) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17992 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 307 OF 2014**

A MABEYA, J

MAY 31, 2023

BETWEEN

CARRIERS AND TRADERS EAST AFRICA LIMITED PLAINTIFF

AND

CLARKSON INSURANCE BROKERS 1ST DEFENDANT

UAP INSURANCE BROKERS 2ND DEFENDANT

AND

CLIVE MSHWESHWE INTERESTED PARTY

RULING

1. Before Court is an application by the plaintiff dated 10/11/2022. It was brought under section 3A of the *Civil Procedure Act*, section 5(1) of the *Judicature Act*, Part 81 of the United Kingdom *Civil Procedure Rules* 2012 and articles 10 and 159(1) of *the Constitution* of Kenya.
2. The application sought orders to the effect that the interested party be held to be in contempt of the orders of 15/7/2022 and commit him to civil jail for the period to be directed by this Court.
3. The grounds for the application were set out on the face of it and in the supporting affidavit sworn by Celestin Kagango on 10/11/2022. It was contended that on 15/7/2022, this Court ordered that the interested party do file and tax his bill of costs within 90 days in default of which the Kshs. 1 million held by him be released.



4. That the interested party was served with the said orders and was aware of them. That the orders had not been set aside yet the interested party failed to tax his costs nor release the Kshs. 1 million to the plaintiff as ordered.
5. That the authority, dignity and respect of this Court was being undermined and unless the orders sought were issued, the interested party would continue making a mockery of this Court.
6. The interested party did not respond to the application and the same is unopposed.
7. The applicant canvassed the application vide written submissions dated 17/1/2023.
8. This Court has considered the court proceedings in this matter. It is not in dispute that on 15/7/2022, this Court ordered that: -

“Let the Interested Party file his Bill of Costs. Any party aggrieved to pursue remedies in accordance with the law. Bill to be filed and taxed within 90 days in default the Kshs. 1 million held be released. The order to take effect on the date it is served on him by Mr. Dodo. In the meantime, all the applications are compromised.

9. Annexed to the application was the order dated 21/7/2022. The same was served upon the interested party on 8/8/2022 and he acknowledged receipt by stamping on the order.
10. Following the lapse of the 90day period, the interested party was notified of the default vide letter dated 3/11/2022 which he equally stamped and was requested to release the Kshs. 1 million to the plaintiff as per the Court order.
11. The question therefore is whether, in the circumstances, the interested party is in contempt of the aforesaid court order?
12. Contempt of court is that conduct or action that defies or disrespects authority of court. *Black’s Law Dictionary* 9th Edition, defines contempt as: -

“The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.”

13. In *Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui* [2021] eKLR, the court held of contempt thus: -

“Properly put, contempt is conduct that impairs the fair and efficient administration of justice. Section 5 of the *Judicature Act* confers jurisdiction on the superior courts to punish for contempt.

...

The reason why courts punish for contempt is to uphold the dignity and authority of the court, ensure compliance with directions of the court, observance and respect of due process of law, preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice by courts. Without sanctions for contempt, there would be a serious threat to the rule of law and administration of justice. For a party to be cited for contempt, he must have violated and or disobeyed an order that was directed at him.”



14. In *Gatharia K. Mutikika v Babarini Farm Limited* [1985] KLR 227, that:
- “A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature...However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge...”
15. In *Katsuri Limited v Kapurchand Depor Shah* [2016] eKLR, citing *Kristen Carla Burchell v Barry Grant Burchell* (Eastern Cape Division case No 364 of 2005), it was stated that: -
- “In order for an applicant to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, knowledge of the terms by the respondent, failure by the respondent to comply with the terms of the order.”
16. In the present case, there is evidence to show that the interested party was not only served with the order but was also issued with a reminder to comply upon expiry of the timelines given. The terms of the order were clear.
17. The interested party’s decision to ignore compliance with the order was therefore willful having been notified of the terms of the order. The applicant has also demonstrated that the interested party failed to comply with the order despite the reminder and call to action.
18. This Court thus finds that the interested party is in contempt of the said order and the same undermines the integrity of the judicial system.
19. In *A.B. & Another v R.B.* [2016] eKLR, the Court of Appeal cited with approval the Constitutional Court of South Africa’s decision in *Burchell v. Burchell* Case No.364 of 2005 where it was held: -
- “Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. *The Constitution* states that the rule of law and supremacy of *the Constitution* are foundational values of our society. It vests the judicial authority of the state in the court and requires other organs of the state to assist and protect the court. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. Failure to enforce court orders effectively have the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law.”
20. The Court having found the interested to be in contempt, the next step is for the Court to determine the punishment to be meted out. The interested party is an advocate of this court.
21. In this regard, having convicted the interested party, Summons hereby issues to him to appear in open court on 15/6/2023 at 11.00am for mitigation and sentencing.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 31ST DAY OF MAY, 2023.

A. MABEYA, FCIArb

JUDGE

2

