



**Equity Bank Kenya Limited v Rhono (Civil Appeal 8 of 2019)
[2023] KEHC 19257 (KLR) (30 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19257 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL 8 OF 2019
WM MUSYOKA, J
JUNE 30, 2023**

BETWEEN

EQUITY BANK KENYA LIMITED APPELLANT

AND

SAIDA JELLE RHONO RESPONDENT

*(Appeal from ruling and order by Hon. WK Chepseba, Chief
Magistrate, CM, in Busia CMCCC No. 4 of 2018, of 25th April 2019)*

JUDGMENT

1. The appeal herein arises from orders made on April 25, 2019, when the appellant was found to be in contempt of court, and to purge the contempt, was directed to release the motor vehicle that it had attached contrary to a court order. The grounds of appeal boil down to the point that the order, said to have been disobeyed, had not been made, and the appellant should not have been held liable in respect of a non-existent order.
2. The orders of April 25, 2019 were made on an application dated March 14, 2019, for contempt of court. The allegation was that the appellant had attached a motor vehicle, despite pendency of an injunction order, that the parties had extended by consent.
3. The consent orders extending the injunction order were first recorded on January 18, 2019, and were extended again on 21st February and March 7, 2019. There was no injunctive orders in place, which could be extended by consent, for the court had on November 22, 2018, dismissed an application, dated January 8, 2015, which had sought the said orders.
4. For avoidance of doubt, the order which denied the injunction orders stated:

“On the application for injunction I find that the plaintiff application has not made out a prima facie case to enable him get the order. There is no evidence from the affidavit that



any loss suffered if any cannot be compensated by damages. The balance of convenience lies with the defendant and not with the plaintiff. They failed to disclose that there was another case which was settled by court over the same matter. The application dated January 8, 2015 is therefore dismissed with costs.”

5. There were no injunctive orders in existence, and none were available for extension. The consent to extend the non-existent orders could not bring into existence orders that had not been made by the court. The extension order was in vain. It amounted to nothing. It extended nothing, for one cannot extend what does not exist in the first place. There is something immoral, wrong and unjust in holding a party accountable for disobeying a non-existent order.
6. The appeal herein is meritorious. I allow it. The orders made, in Busia CMCCC No 4 of 2018, in the ruling of April 25, 2019, are hereby vacated, and replaced with an order that the application, dated March 14, 2019, is dismissed.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 30TH DAY OF JUNE 2023

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Appearances

Mr. Mburu, instructed by Mburu Maina & Company, Advocates for the appellant.

Saida Jelle Rhono, the respondent, in person.

