



**Kimani v Mwangi & 3 others (Civil Appeal E003 of 2021)
[2023] KEHC 21841 (KLR) (25 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21841 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E003 OF 2021
A MSHILA, J
AUGUST 25, 2023**

BETWEEN

VERONICAH WAIRIMU KIMANI APPELLANT

AND

DAVID KARANJA MWANGI 1ST RESPONDENT

PLATINUM CREDIT LIMITED 2ND RESPONDENT

NATIONAL TRANSPORT & SAFETY AUTHORITY 3RD RESPONDENT

AND

AUTO GALLERY (MOMBASA) LIMITED CONTEMNOR

RULING

1. Before court is a notice of motion filed on May 4, 2023 and brought under sections 3A and 78 of the [Civil Procedure Act](#), cap 21 Laws of Kenya and order 40 rules 1 and 2 of the [Civil Procedure Rules 2010](#) and article 159 (2)(c) of the [Constitution](#) of Kenya and all other enabling provisions of the law. The appellant/applicant sought for orders:-
 - a. Spent
 - b. That in the interim, pending hearing and determination of this application, this honourable court be pleased to order the 2nd respondent and the 2nd contemnor, to wit, Platinum Credit Limited and Auto Gallery (Mombasa) Limited herein to forthwith release unconditionally and deliver up motor vehicle registration number KCF 710T to the applicant without further ado.
 - c. That the 2nd respondent and its agent the 2nd contemnor herein, to wit, Platinum Credit Limited and Auto Gallery (Mombasa) Limited be summoned to appear before this court and/



or show cause why they should not be punished for persistent and deliberate contempt of court decree and orders given on March 31, 2023.

- d. That the honourable court be pleased to punish and commit the Directors of Platinum Credit Limited and Auto Gallery (Mombasa) Limited, to civil jail for a period not exceeding six (6) months for willfully and deliberate disobedience of the court orders issued on March 31, 2023.
 - e. That this honourable court be pleased to order the 2nd respondent and the 2nd contemnor, to wit, Platinum Credit Limited and Auto Gallery (Mombasa) Limited herein to forthwith release unconditionally and deliver up motor vehicle registration number KCF 710T to the applicant without further ado.
 - f. That the 2nd respondent and the 2nd contemnor be ordered to pay for the cost of this application incidental thereof on full indemnity basis.
2. The application is premised on the grounds that the appellant's appeal prohibiting the 2nd respondent from continuing with the attachment of motor vehicle registration number KCF 710T was allowed. That despite the 2nd respondent being served with the orders of the court, they elected to disobey the said orders by continuing to attach the applicant's vehicle as such should be held in contempt.
 3. The application is supported by the affidavit of Veronicah Wairimu Kimani sworn on May 3, 2023. The applicant deposes that this court allowed the applicant's application that sought to prohibit the 2nd respondent and its agents from continuing with the attachment of motor vehicle registration number KCF 710T. The applicant contended that a copy of the judgment was sent to the 2nd respondent on March 31, 2023 but the 2nd respondent and the 2nd contemnor have elected to disobey the said court orders by continuing to attach the motor vehicle which they have refused to release. The court was asked to direct the 2nd respondent to release the vehicle at their own costs.
 4. Richard Simbala the 2nd respondent's legal officer filed the replying affidavit sworn on May 17, 2023 on its behalf. He deposed that the application the subject of the appeal was dismissed on December 17, 2020 and the vehicle was repossessed before any orders were issued as such the prayer seeking for release has been overtaken by events. In any case, the court was urged to find that there was no order for the release of the suit motor vehicle. The instant court was said to be *functus officio* having dealt with the appeal.
 5. The parties were directed to canvass the application by way of oral submissions.

Applicants Submissions

6. The applicant submitted that the appellate court found in its judgment that she never signed the affidavit agreeing to surrender the suit motor vehicle for loan given by the 2nd respondent as such there is no basis for the 2nd respondent to continue holding the applicant's motor vehicle. She contended that the appeal was allowed with costs and the order was served upon the 2nd respondent which order restrained the 2nd respondent from interfering with the applicant's possession of the motor vehicle. It was submitted that despite service, the 2nd respondent has refused to release the motor vehicle. The reasoning by the 2nd respondent that there was no order for release was said to be flawed as attachment is a continuous process. The 2nd respondent ought to have advised his client to release the motor vehicle as there is no basis to continue holding the said motor vehicle. The court was said not to be *functus officio*.



Respondents Submissions

7. In response, counsel argued that there was no order for release of motor vehicle which was repossessed in December, 2020. Prayer 3 of the applicant's application was said to be unclear as to who the order is to be enforced against. The court was said to be *functus officio* as it is limited to matters raised in the appeal. The court was urged to dismiss the application with costs.

Issues For Determination

8. Having considered the applicant's application, the replying affidavit by the respondents and the rival submissions, the main issue for determination is whether the respondents are in contempt of the orders of the court.

Analysis

9. Section 5 of the [Judicature Act](#) confers jurisdiction on the superior courts to punish for contempt. The section provides that:
 - (1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.
 - (2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.
10. The [Halsbury's Laws of England](#) (4th Edition (9th Re-Issue), Pg 33, para 52) defines civil contempt as follows;

“...disobedience to process is a civil contempt of court to refuse or neglect to do an act required by a judge or order of the court within the time specified in the judgment order requiring a person to abstain from doing a specified act, or to act in breach of an undertaking given to the court by a person, on the faith of which the court sanctions a particular course of action or inaction...”
11. The applicable standard of proof for contempt proceedings is above a balance of probabilities, given the criminal nature of contempt proceedings. Refer to the case of [Mutitika v Baharini Farm Ltd](#) [1985] KLR 229, 234, where the Court of Appeal had this to say:

“...In our view the standard of proof in contempt proceedings must be higher than proof on the 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, in criminal cases. It is not safe to extend it to offence which can be said to be quasi- criminal in nature.”
12. The main features of disobeying court are that the contemnor must be aware of the existence of the court order. There must be an existing court order capable of being disobeyed and lastly that breach thereof must be proved. Further the threshold required is not just on a balance of probabilities but the threshold that is required for contempt proceedings is that required in criminal proceedings which



is beyond reasonable doubt. In *Milka Wangoi Kamau & another v Habby Misoga Lugadiru* (2014) eKLR it was held that:

“As much as civil contempt is an aspect of civil litigations it has got criminal implications/ inclinations and hence its threshold is not merely founded on balance of probability but at times it must be proved beyond reasonable doubt. Therefore, the committal law is to the effect that the standard of proof required at committal proceedings is the criminal standard”

13. The appellant contends that *vide* a ruling delivered on March 31, 2023 the applicant’s application amended on June 24, 2020 was allowed as prayed. The main prayer that had been sought in the said application was that the 2nd respondent and/or its agents be prohibited from continuing with the attachment of motor vehicle registration number KCF 710T and/or interfering with the appellant’s possession of the said motor vehicle.
14. The appellant argues that the 2nd respondent and the 2nd contemnor were served with the decree and orders of the court allowing the appeal on April 17, 2023 which orders they have elected to disobey by continuing to attach the appellant’s motor vehicle.
15. The 2nd respondent does not deny being served with the judgment of the court delivered on March 31, 2023. The main issue as argued by the 2nd respondent’s legal officer is that the appellant’s application amended on June 24, 2020 was dismissed by the trial court on December 17, 2020 and on December 29, 2020 the 2nd respondent repossessed the appellant’s motor vehicle prior to any restraining orders being issued by the trial court as such there was no order existing for the respondents to disobey.
16. The appeal by the court allowing the applicant’s application amended on June 24, 2020 was said to have been overtaken by events as the motor vehicle sought to be released was properly attached by the respondents on December 29, 2020. In any event, the respondents aver that the court did not issue any order in respect to the release of the subject motor vehicle in its judgment delivered on March 31, 2023.
17. In the circumstances, the prayer seeking unconditional release of the said motor vehicle was said to have been overtaken by events as repossession took place in December 2020.
18. Upon perusing the court record, it is noted that the appellant filed her application in the trial court dated May 26, 2020 and amended on June 24, 2020 where she sought for an order prohibiting the 2nd respondent from continuing with the attachment of the suit motor vehicle and/or interfering with the appellant’s possession of the same. At this point the suit motor vehicle was in the appellant’s possession. On December 17, 2020, the trial court delivered its ruling where it dismissed the said applicant’s application. This allowed the respondents to attach and repossess the subject motor vehicle on December 29, 2020.
19. At this juncture, it is correct to note that no order existed prohibiting the respondent from attaching the appellant’s motor vehicle as such the 2nd respondent properly attached the appellant’s motor vehicle on December 29, 2020.
20. On January 4, 2021, the appellant filed an application for orders restraining the 2nd respondent from advertising for sale, selling, disposing or dealing with the appellant’s motor vehicle. On January 14, 2021, the court issued an order restraining the 2nd respondent from selling the motor vehicle subject of this matter.
21. It is this courts considered view, that if there is any existing order that is capable of being disobeyed by the respondents, it is the order of the court issued on January 14, 2021 prohibiting the sale of the suit motor vehicle.



22. Nevertheless, the appellant's appeal having succeeded in this court, the appellant argues that attachment is a continuous process and the 2nd respondent ought to release her motor vehicle failure to which the 2nd respondent should be held in contempt for disobeying the court orders issued on March 31, 2023 and should be committed to civil jail for a period not exceeding six months.
23. On this issue, this court is satisfied that the motor vehicle herein was properly attached as there exists no court order capable of being disobeyed with the exception of the one the court issued restraining the 2nd respondent from selling the motor vehicle subject of this matter.
24. The 2nd respondent therefore, cannot be found to be in contempt and this court finds that the 2nd respondent is not guilty of any act of disobedience of court orders as contemplated by the appellant as there was no order in existence when the 2nd respondent proceeded to attach the appellant's motor vehicle.

Findings and Determination

25. In the upshot, is that the application is found to be devoid of merit and it is hereby dismissed with costs to the respondents.
26. The lower court file be transferred back to the trial court for hearing and final determination.

Orders accordingly.

DATED SIGNED AND DELIVERED ELECTRONICALLY AT KIAMBU THIS 25TH DAY OF AUGUST, 2023.

A.MSHILA

JUDGE

In the presence of;

Mwenda – Court Assistant

N/A – by the Applicant

N/A – by the Respondent

