



Muthusi v Diamond SKL Estate & Investment Ltd & another (Miscellaneous Civil Case E128 of 2021) [2022] KEHC 3214 (KLR) (26 May 2022) (Ruling)

Neutral citation: [2022] KEHC 3214 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CIVIL CASE E128 OF 2021
MM KASANGO, J
MAY 26, 2022**

BETWEEN

DAVID MUTHUSI APPLICANT

AND

DIAMOND SKL ESTATE & INVESTMENT LTD 1ST RESPONDENT

STEPHEN MUREITHI 2ND RESPONDENT

RULING

1. On May 27, 2020, the Ruiru SPM Magistrate's court ordered the respondents to deposit Kshs.385,000 into that court or in a joint interest earning account in the names of the advocates.
2. The applicant deponed the respondent did not obey the order of the trial court and has moved this Court seeking orders to attach Kshs.385,000 found in the respondents' bank account. In default the applicant seeks a finding that the respondents is in contempt and do commit the 2nd respondent to prison.
3. In respect of orders for attachment of money in the respondent's Bank account the applicant is before the wrong court. The order for the deposit to be made by the Ruiru Court against respondents as security of costs. It is that court that should have been moved for execution. It is troubling that the applicant did indeed approach that court with similar prayers as are before this Court and that being the case the applicant is abusing the court process in filing a similar application similar to one which is pending determination by Ruiru Magistrates' Court. On that ground the application will fail.
4. Are the respondents in contempt of court? I begin by citing the case *Omega Enterprises (K) Ltd v KTDA* [1993] LLR 2525 (CAK) thus:-

“It is the plain and unqualified obligation of every person in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The



uncompromising nature of this obligation is shown by the fact that it extends to cases where the persons affected by an order believe it to be irregular or even void...”

5. The order of contempt mainly because it mostly results in the contemtor losing his liberty cannot be made unless the order is served on the respondent. In this regard see the case *Kariuki & 2 others v Minister of Gender, Sports, Culture & Social Services and 2 others* [2004] 1 KLR 588 thus:-

“... in England, as a general rule, no order of court requiring a person to do or restrain from doing any act may be forced unless a copy of the order has been served personally on the person required to do so or abstain from doing the act in question. The copy of the order served must be endorsed with a notice informing the person on whom the order is served that if he disobeys the order, he is liable to the processes of execution to compel him to obey it ... service on the alleged contemnor’s advocates did not constitute personal service and even if the alleged contemnor had knowledge of the court order, he would not be liable for contempt...”

6. In this case, the applicant served the advocate of the respondents but never the respondents personally. The court therefore cannot find the respondents are in contempt of an order they have not been served.
7. It is because of the reasons set out above that the application dated April 1, 2021 is dismissed.
8. This file is closed.

RULING DATED AND DELIVERED AT KIAMBU THIS 26TH DAY OF MAY, 2022.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Mourice

For applicant : - Mr. Oriedi

For Respondent : - No appearance

RULING delivered virtually.

MARY KASANGO

JUDGE

