

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. 123 OF 2019

(Being an appeal from the original ruling and order of Hon. TA Odera, Senior Principal Magistrate,

of 9th December 2019, in Mumias SPMCCC No. 145 of 2019)

KENNEDY SHIKUKU t/a ESHIKONI AUCTIONEERS.....APPELLANT

VERSUS

MOHAMMED IQBAL.....RESPONDENT

JUDGMENT

1. Appeal herein arises from an order that was made on 9th December 2019 in Mumias SPMCCC No. 145 of 2019.
2. The events leading up to the order of 9th December 2019 began on 5th December 2019, when the court ordered that the appellant avails the motor vehicle, the subject of those proceedings, in court on 6th December 2019 at 9.00 AM for it to be released to the respondent. On 6th December 2019, the appellant did not attend court, and the motor vehicle was not made available, instead the court was told by his advocate, that it had been sold. The court then ordered that the appellant attend court on 9th December 2019, with the motor vehicle or an explanation, ostensibly related to the alleged sale. Come 9th December 2019, the appellant did not attend court, and the court was informed by an advocate, that the appellant was before another court. The court then ordered that the application be heard at 12.45 PM that day. That afternoon, the court ruled that appellant had refused to obey court orders, and ordered for his arrest.
3. In the grounds of appeal, as set out in the memorandum of appeal, dated 16th December 2019, the appellant complains that the court ordered his arrest of instead of hearing the application dated 9th December 2019, the court erred in holding that the order of 5th December 2019 had to be complied with first before the application dated 9th December 2019 was heard, the court ordered arrest before affording the appellant an opportunity to be heard and before contempt proceedings were conducted, among others.
4. The proceedings are very clear, that the court made an order, on 5th December 2019, for the appellant to avail a motor vehicle to court on a specified date, 6th December 2019. The appellant did not attend court on the due date, 6th December 2019, and did not avail the motor vehicle, instead the court was informed by his advocate that the motor vehicle had been sold, and no evidence of sale was provided. The court granted more time, for the appellant to appear before the court with the vehicle or an explanation on 9th December 2019. Come 9th December 2019, the appellant did not attend court, nor avail the vehicle, instead his advocate chose to file an application instead.
5. The record before me is clear that the appellant was defiant of the order. Orders were made for him to attend court. He chose not to attend court, but send his advocate instead. He chose not to produce the vehicle as ordered, and he made no effort to provide proof that he had sold it, hence it was not available for production. This was a clear case of disobedience of court orders on the face of the court. The court properly exercised discretion by ordering his arrest. He was given opportunity, several times, to come to court to explain himself, he chose to disobey the court by staying away. He cannot be heard to complain that he was not afforded an opportunity to be heard.
6. I find no merit whatsoever in the appeal before me, and I hereby dismiss it with costs. Court orders have to be complied with. More so by officers of the court, such as the appellant.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 6th DAY OF AUGUST 2021

W. MUSYOKA

JUDGE