



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISC. APPLICATION NO. 749'B' OF 2019**

NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY.....APPLICANT

**-VERSUS-**

RUMBA KINUTHIA.....RESPONDENT/1<sup>ST</sup> CONTEMNOR

M/S ANFIELD AUCTIONEERS LTD.....INTERESTED PARTY/2<sup>ND</sup> CONTEMNOR

**AS CONSOLIDATED WITH**

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. 058 OF 2021**

NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY.....APPELLANT

**-VERSUS-**

RUMBA KINUTHIA.....1<sup>ST</sup> RESPONDENT

THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT

**RULING**

1. The applicant in Misc. Application No. 749'B' of 2019; who is also the appellant in High Court Civil Appeal No. E058 of 2021; has lodged the Notice of Motion dated 9th March, 2021. The Motion is supported by both the grounds laid out on the body thereof and the facts stated in the sworn affidavit of Esther Chege. The applicant sought for the orders hereunder:

*a. Spent.*

*b. Spent.*

*c. THAT the respondent and the interested party be jointly and severally declared guilty of contempt of court of wilful and unlawful disobedience of the stay order of the court dated 28<sup>th</sup> January, 2021 and punished with a fine not exceeding Kshs.200,000/ or a custodial sentence of up to 6 months or both such fine and imprisonment.*

*d. THAT an order do issue compelling the respondent and the interested party to abide by the order of stay of execution of the court dated the 28<sup>th</sup> of January, 2021 pending the hearing and determination of Civil Appeal HCCA EO58 of 2021 already lodged.*

*e. THAT the respondent be ordered to personally meet the costs of the unlawful and illegal attachment conducted on 8<sup>th</sup> March, 2021.*

*f. THAT the costs of the application be met by the respondent.*

2. The application stands opposed by way of the replying affidavit sworn by the respondent/1st contemnor on 5th April, 2021, to which the applicant rejoined with the supplementary affidavit sworn by Mamo B. Mamo on 16th April, 2021 followed by the further replying affidavit sworn by the respondent on 7th May, 2021.
3. The parties were directed to file written submissions on the instant Motion. The record shows that neither the interested party nor the 2nd respondent participated in these proceedings.
4. I have considered the grounds laid out on the face of the Motion; the facts deponed in the affidavits in support of and in opposition thereto; and the submissions on record plus the authorities cited therein.
5. From my study of the instant Motion, it is clear that the orders sought are two-fold in nature. I will begin with the order touching on whether the respondent and the interested party are in contempt of the court orders issued on 28th January, 2021.
6. On the part of the applicant, it is stated and submitted that despite the existence of the stay of execution order issued by the High Court on 28th January, 2021 and compliance with the conditions thereof by the applicant, the respondent engaged the services of the interested party to seize and impound one of the applicant's motor vehicles namely the motor vehicle registration number KCT 396Y ("the subject motor vehicle") on 8th March, 2021 and in the absence of fresh warrants of attachments and sale in total disregard of the aforementioned stay order, thereby making the attachment and sale thereof unlawful/illegal.
7. It is also stated and submitted on behalf of the applicant that the aforementioned actions by the respondent are criminal in nature and have been aided by the interested party, and hence both parties ought to be held liable for being in contempt of the court order issued.
8. On his part, the respondent denied being in contempt of the court order and states that it is the applicant who failed to comply with the conditions given by the court in its ruling on the stay of execution.
9. The respondent further states that the proclamation of the subject motor vehicle is lawful since the interested party had sought for and obtained a 45-day extension dated 4th March, 2021 on the proclamation notice; to which the applicant through its deponent Mamo B. Mamo rejoined with the assertion that the applicant fully complied with the conditions set by the court and even communicated such compliance to the respondent.
10. The applicant also states and submits that notwithstanding the above and the existence of a court order for the release of the subject motor vehicle to the applicant, the respondent has continued to defy the court orders in place while the subject motor vehicle continues to waste away in the custody of the interested party.
11. Section 5 of the **Judicature Act, Cap. 8 Laws of Kenya** is the paramount substantive law granting superior courts the power to punish for contempt. The section stipulates the following:

*“(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.*

*...”*

12. The term 'contempt' is defined in the **Black's Law Dictionary** as follows:

*“a disregard of, or disobedience to, the rules or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body.”*

13. The guiding principles in determining whether there has been contempt of court orders, as expressed in **Pinnacle (K) Travel and Safaris Limited v Omar Faruk Osman & 5 others [2017] eKLR** and echoed in the case of

**Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR are:**

- a. That the order was clear, unambiguous and binding on the defendant.*
- b. That the defendant had knowledge of or proper service of the terms of the order.*
- c. That the defendant acted in breach of the terms of the order.*
- d. That the defendant's conduct was deliberate.*

14. On the **first** principle above, it is not contested that the High Court vide the ruling delivered on 28th January, 2021 granted the applicant an order for a stay of execution of the judgment delivered by the lower court on 7th October, 2019 on the condition that the applicant deposits the decretal sum either in a joint interest earning account or in court within 30 days from the date thereof. The High Court also ordered the applicant to file the appeal within 14 days therefrom.

15. Concerning the **second** principle, upon my study of the record, it is apparent that the respondent was at all material times aware of the terms of the aforementioned ruling and order since it was delivered in the presence of counsel for the respondent.

16. In respect to the **third** and **fourth** principles, upon my study of the record, I observed that the applicant brought credible evidence to show that it complied with the conditions for a stay of execution by depositing the decretal sum of Kshs.5,000,000/= in court on 26th February, 2021 and notified the respondent of such deposit.

17. I also observed that it is not in dispute that the respondent thereafter moved to execute the decree by instructing the interested party to attach and impound the subject motor vehicle, notwithstanding the compliance by the applicant and the existing stay order. It is therefore clear that the question on whether the proclamation notice is valid or not is not of concern here. It is clear that in the presence of an existing order of a stay of execution, any execution by the respondent and the interested party would be invalid.

18. Further to the foregoing, the record shows that when the parties attended court on 12th April, 2021 in respect to the instant Motion, the court ordered that the subject motor vehicle be released in the public interest provided that the applicant deposits the sum of Kshs.300,000/= within 14 days from that date. A consequent order was issued to that effect on 22nd April, 2021.

19. The record further shows that the applicant complied with the above condition and yet there is nothing to indicate that the respondent and the interested party have ensured the release of the subject motor vehicle to the applicant.

20. Consequently, and for the foregoing reasons, the only reasonable conclusion for me to arrive at is that the defiance on the part of both the respondent and the interested party of the ruling of 28th January, 2021 and consequently, the ruling delivered on 12th April, 2021 are deliberate acts of total disregard of the court orders and therefore amount to contempt of court.

21. The second order concerns itself with whether the respondent and the interested party ought to be compelled to comply with the order issued on 28th January, 2021.

22. Upon my study of the record and as earlier indicated, the order for a stay of execution was conditionally issued. Moreover, I have established that the applicant has complied with the conditions set by the court.

23. In the absence of anything to indicate that the order for a stay of execution has been varied or set aside, and upon my finding in respect to the contempt of both the stay order and the order issued on 22nd April, 2021 I find it to be fair and in the interest of justice to find in favour of the applicant in this instance.

24. Consequently, the Motion dated 9<sup>th</sup> March, 2021 is allowed thus giving rise to issuance the following orders:

i. The respondent and the interested party herein are found to be in contempt of the ruling delivered on 28<sup>th</sup> January, 2021 and subsequently, the ruling delivered on 12<sup>th</sup> April, 2021.

ii. The respondent and the interested party are granted a final opportunity to abide by the order for stay of execution issued by the court on 28<sup>th</sup> of January, 2021 and subsequently, the ruling delivered on 12<sup>th</sup> April, 2021 by ensuring the release of the motor vehicle registration number KCT 396Y to the applicant forthwith failing which the applicant shall be at liberty to move the court for issuance of notices to show cause as to why the respondent and the interested party should not be punished accordingly for being in contempt of the aforementioned court orders.

iii. The respondent be and is hereby ordered to personally meet the costs of the unlawful and illegal attachment conducted on 8th March, 2021.

iv. The appellant/applicant shall have the costs of the instant Motion to be borne by the respondent.

v. The aforementioned orders shall apply to Civil Appeal HCCA EO58 of 2021 accordingly.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 17TH DAY OF DECEMBER, 2021.

.....

J. K. SERGON

**JUDGE**

In the presence of:

..... for the Appellant/Applicant

..... for the Respondent

..... for the Interested Party

..... for the Appellant/Applicant

..... for the 1<sup>st</sup> Respondent

..... for the 2<sup>nd</sup> Respondent