



**African Express Airways (Kenya) Limited v Kenya Airways PLC; Joseph (Chairman) & 2 others (Exparte) (Environment and Land Case Civil Suit E282 of 2021) [2022] KEELC 14739 (KLR) (10 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14739 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT E282 OF 2021  
SO OKONG'O, J  
NOVEMBER 10, 2022**

**BETWEEN**

**AFRICAN EXPRESS AIRWAYS (KENYA) LIMITED ..... PLAINTIFF**

**AND**

**KENYA AIRWAYS PLC ..... DEFENDANT**

**AND**

**MICHAEL JOSEPH (CHAIRMAN), ..... EXPARTE**

**ALLAN KILAVUKA (GROUP MANAGING DIRECTOR & CEO) ..... EXPARTE**

**HABIL WASWANI (DIRECTOR LEGAL SERVICES & SECRETARY) .. EXPARTE**

**RULING**

1. The plaintiff brought this suit through a plaint dated July 30, 2021. Together with the plaint, the plaintiff filed a notice of motion application dated July 30, 2021 seeking the following orders;
  1. Pending the hearing and determination of the suit an interlocutory order of injunction be issued compelling the defendant and its agents, contractors, employees and workmen or otherwise howsoever to open the access route to the plaintiff's premises known as LR No 9042/584 from Airport North Road, Embakasi, Nairobi (hereinafter referred to as "the suit property").
  2. Pending the hearing and determination of the suit a temporary order of injunction does issue restraining the defendant and its agents, contractors, employees and workmen or otherwise howsoever from interfering with the suit property or in any way trespassing upon or entering and occupying, using any part of the property for any purpose unless with the consent of the plaintiff or for the restoration of the pre-Friday July 23, 2021 status quo.



2. The plaintiff averred that it was the registered leasehold proprietor of the suit property. The plaintiff averred that its lease from the Government of Kenya was for a term of 99 years with effect from June 1, 1995. The plaintiff averred that the grant in respect of the suit property was registered on June 15, 1995. The plaintiff averred that on Friday, July 23, 2021, the defendant through its agents, contractors, employees or workmen without the consent or permission of the plaintiff or any lawful excuse raided the plaintiff's premises on the suit property in a high handed manner and drove the plaintiff and the plaintiff's directors, employees and customers from the premises while at the same time dismantling and removing the plaintiff's movable properties from the premises.
3. The plaintiff averred that the defendant purported to carry out the said eviction pursuant to an order that was allegedly issued by the Chief Magistrate's court at Milimani Commercial Court on July 16, 2021 in MELC No E235 of 2021 in relation to LR No 9042/583 and LR No 9042/1051. The plaintiff averred that the said order did not concern the suit property, LR No 9042/584. The plaintiff averred that the suit property was valued at over Kshs 515,000,000/= and that a dispute in respect thereof was outside the jurisdiction of the Magistrate's Court in case the said order was supposed to apply to the suit property. The plaintiff averred that as a result of its eviction from the suit property by the defendant, it was incurring daily losses of about US \$ 1924. The plaintiff averred that it was not aware that the property that was referred to in the lower court as LR No 9042/1051 was the same as LR No 9042/584 (the suit property). The plaintiff averred that it had been using the suit property since June 1, 1995 and that there had never been any encumbrance against the title of the property. The plaintiff averred that neither the defendant nor any other person had come to lay a claim to the suit property since the plaintiff acquired the same in 1995. The plaintiff averred that it had been paying land rent for the suit property since 1995. The plaintiff denied that the defendant was the lawful registered owner of the suit property. The plaintiff averred that in any event, the lease that the defendant claimed to have over the suit property expired in 2011. The plaintiff averred that it would suffer irreparable harm if the orders sought were not granted. The plaintiff averred that it was operating an airline business on the suit property which would suffer since it would not be able to serve its customers if the orders sought were not granted.
4. The plaintiff's injunction application was opposed by the defendant. The defendant contended that the issues raised in this suit were the same issues in the suit that was pending in the lower court. The defendant contended that this court lacked jurisdiction to set aside valid orders that had been made by the lower court save on appeal or on application for judicial review. The defendant urged the court to strike out the plaintiff's application. The defendant averred further that it was the lawful registered proprietor of the suit property. The defendant averred that it lawfully took possession of the suit property which was also known as LR No 9042/1051 pursuant to a lawful court order made on July 16, 2021 by the lower court. The defendant averred that its parcel of land was known as grant No IR 67128, LR No 9042/584 and measured 0.6083 of a hectare. The defendant averred that its parcel of land was leasehold for a term of 33 years with effect from 8<sup>th</sup> July, 1978 and that its land reference number had been changed to Nairobi central parcel, LR No 9042/1051.
5. The defendant averred that the eviction complained of by the plaintiff was carried out on Nairobi central parcel 9042/1051 and that the same was lawfully carried out pursuant to a court order issued by the lower court which had not been varied or set aside. The defendant contended that the developments that the plaintiff had carried out on the suit property were as a result of unlawful occupation of the suit property by the plaintiff. The defendant contended that it was the lawful owner of the suit property and that it was in possession thereof. The defendant urged the court to maintain that status quo.
6. On August 5, 2021 before the court delivered a ruling on the application, the court made an order on the following terms;



- “1. That the court shall deliver a ruling on the plaintiff’s application on September 23, 2021.
  2. That pending the delivery of the said ruling, the defendant shall on a temporary basis restore the plaintiff forthwith into LR No 9042/584 and shall ensure that their agents, contractors, employees and workmen vacate and remove themselves from the premises immediately and unconditionally.”
7. The court delivered a ruling on the application on September 23, 2021 as scheduled. The court allowed the plaintiff’s application. In the ruling, the court stated as follows in part:

“... I am satisfied that the plaintiff has established a *prima facie* case with a probability of success against the defendant and that it stands to suffer irreparable harm if the orders sought are not granted. I am also satisfied that the plaintiff’s case is clear and that exceptional circumstances exist that warrants the granting of a temporary mandatory injunction.

...There is no doubt from what I have set out hereinabove that the plaintiff’s title to the suit property was issued earlier than that of the defendant. Whereas the plaintiff’s title was issued on June 13, 1995 and registered on June 15, 1995, the defendant’s expired grant was issued on August 25, 1995 and registered on October 4, 1995. I am not in agreement with the defendant’s argument that although its title was issued later, it was the first in time because the term of the lease was indicated as commencing on July 8, 1978. The law is settled that priority of registered interests is reckoned from the date of registration. It follows that the plaintiff’s title to the suit property having been the first to be issued and registered, the same must prevail over the defendant’s title in terms of priority...I am satisfied that the plaintiff has demonstrated on a *prima facie* basis that its title over the suit property was the first in time. The plaintiff’s title must therefore prevail over the defendant’s alleged title over the suit property.

...I think that I have said enough to show that on a *prima facie* basis, the plaintiff has demonstrated that there was no lawful order from a competent court authorizing the eviction of the plaintiff from the suit property or blocking its access to the property. From the valuation report that was produced by the plaintiff in evidence, it is clear that the plaintiff was all along using LR No 9042/583 to access the suit property. That right could only be taken away by consent of the plaintiff or through a lawful court order and neither existed in this case.”

8. Following that ruling an order was extracted on September 30, 2021 on the following terms:
- “1. That pending the hearing and determination of the suit an interlocutory order of injunction is issued directed at the defendant and its agents, contractors, employees and workers compelling the defendant and its agents, contractors, employees and workmen and otherwise howsoever to open the access route to the plaintiff’s premises land reference No 9042/584 from Airport North Road, Embakasi, Nairobi.
  2. That pending the hearing and determination of the suit herein a temporary order of injunction is issued restraining the defendant and its agents, contractors, employees and workmen and otherwise howsoever from interfering with the plaintiff’s property known as land reference No 9042/584, Embakasi, Nairobi or in any way trespassing upon or entering and occupying, using any part of the property for any purpose unless with the consent of the plaintiff or for the restoration of the pre-Friday July 23, 2021 status quo.”



9. The defendant was dissatisfied with the said ruling and filed an application by way of notice of motion dated December 1, 2021 seeking a review and/or variation of the same. The court dismissed the defendant's application for review on April 27, 2022. In the ruling, the court stated as follows in part:

“...As mentioned earlier, the applicant's review application has been brought on the basis of discovery of new and important evidence. I am not satisfied that the applicant has met the threshold for review on the ground of discovery of new evidence. The applicant has merely stated that it received a letter from the Cabinet Secretary, Ministry of Lands to the effect that the title held by the respondent is in respect of a parcel of land situated in Thika. As correctly pointed out by the respondent, the applicant has not indicated under what circumstances this letter was written. There is no indication as to who had requested for the information contained in the letter and when. There is also no evidence that whoever sought the information could not have done so before the hearing of the respondent's application the ruling in which is sought to be reviewed. It has not been demonstrated by the applicant that at the time the application that gave rise to the ruling sought to be reviewed was being argued, the information regarding the alleged fake title held by the respondent was not within the knowledge of the applicant despite exercise of due diligence to find it.

Whether or not the title held by the respondent is fake is also questionable from the evidence placed before the court. The title, grant No 69013 in respect of LR No 4953/2804 situated in Thika allegedly issued to Jimmy Angwenyi was issued on April 10, 1996 and registered on April 26, 1996. On the other hand, the respondent's title was issued on June 13, 1995 and registered on the same date. It follows therefore that it was the respondent's parcel of land that was registered first under grant No 69013 and not that of Jimmy Angwenyi. In the circumstances, I wonder why it is the respondent's title that is fake and not that of Jimmy Angwenyi.”

10. What is now before me is an application brought by the plaintiff by way of notice of motion dated February 1, 2022 seeking the following orders;
1. That leave be granted for the plaintiff to initiate contempt of court proceedings against the defendant and its officers, Michael Joseph, Allan Kilavuka and Habil Waswani (hereinafter together referred to as “the respondents” where the context so permits).
  2. That upon hearing of this application the respondents be cited and found guilty of contempt of court.
  3. That Michael Joseph, Allan Kilavuka and Habil Waswani be detained in prison for a term not exceeding six months for the defendant's breach of the orders made by this court on August 5, 2021 and September 30, 2021.
  4. That the defendant shall pay the expenses incurred by the plaintiff such as rent, service charge and VAT for the alternative premises which the plaintiff had to lease under lease dated August 13, 2021 between the plaintiff and Signon Aviation Limited while denied free and unconditional access and use of the suit property through LR No 9042/583, such rent to be paid from August 16, 2021 to the date when the plaintiff would be restored to the suit property.
  5. That the defendant shall pay the expenses incurred by the plaintiff such as rent, service charge and VAT for the additional alternative premises which the plaintiff had to lease under lease dated October 25, 2021 between the plaintiff and Signon Aviation Limited while denied free and unconditional access and use of the suit property through LR No 9042/583, such rent



to be paid from August 16, 2021 to the date when the plaintiff would be restored to the suit property.

6. That the Police Commandant Kenya Airport Police Unit, Jomo Kenyatta International Airport shall oversee the implementation of the orders herein.
7. That the costs of the application be borne by the defendant.
11. The application is brought on the grounds set out on the face thereof and on the affidavit of Kaltuma Hassan Bonaya sworn on February 1, 2022. The plaintiff has contended that on August 5, 2021 the court ordered the defendant to restore the plaintiff to the suit property on a temporary basis immediately and unconditionally. The plaintiff has averred that the said order was issued by the court in the presence of the advocates for both parties pending the delivery of a substantive ruling on the matter. The plaintiff has averred that the order was also served upon the defendant and its advocates through e-mail on August 5, 2021. The plaintiff has averred that on the same date, the defendant's Director of Legal Services and Company Secretary acknowledged receipt of the order but maintained that they would not allow the plaintiff to access the suit property through LR No 9042/583.
12. The plaintiff has averred further that on August 6, 2021 the defendant was once again served with a hard copy of the order through a process server. The plaintiff has averred that as at August 13, 2021, the defendant had failed to comply with the court order and the plaintiff had no alternative but to look for an alternative office to conduct business. The plaintiff has averred that through lease agreements dated August 13, 2021 and October 25, 2021 the plaintiff leased office space from Siginon Aviation Limited for a term of 5 years and 6 months. The plaintiff has averred that the court delivered a substantive ruling on September 23, 2021 in which it confirmed the earlier orders of August 5, 2021. The plaintiff has averred that as at September 23, 2021, the defendant had not restored the plaintiff into the suit property in that the defendant refused to open the access route to the suit property as had been ordered by the court.
13. The plaintiff has averred that on October 1, 2021, it served the defendant with the said order of September 23, 2021 through e-mail. The plaintiff has averred that despite service of the order and having knowledge of the terms thereof, the defendant failed to obey the same. The plaintiff has averred that the access to the suit property remained closed and the area is cordoned off with metal fencing that was not there as at July 23, 2021. The plaintiff has averred that despite several reminders by its advocates to the defendant to obey the court orders, they had not complied. The plaintiff has averred that the defendant subsequently responded on October 4, 2021 claiming that the access to the plaintiff's premises was controlled by Kenya Airports Authority and that the plaintiff should take up the issue with them. The plaintiff has averred that the respondents have deliberately disobeyed clear and unambiguous court orders. The plaintiff has averred that unless the orders sought are granted, the rule of law and the authority and dignity of the court will continue to be eroded.
14. The application is opposed by the respondents through three separate affidavits. The first affidavit is sworn by Habil Waswani, the defendant's Director of Legal Services and Company Secretary on April 22, 2022. In his affidavit, Habil Waswani has stated that he was aware of the order that was made by the court herein on August 5, 2021. He has stated that the defendant complied with the order by restoring the plaintiff into the suit property. He has stated further that he was also aware of the order that was made by the court on September 23, 2021. He has stated that following the making of the said order, the defendant sought a review of the same whose determination was still pending. He has stated that the defendant's review application notwithstanding, the defendant had not disobeyed the said order as alleged by the plaintiff. He has stated that the defendant granted the plaintiff access to the suit property and the plaintiff was in possession. He has stated that there was no order allowing the



plaintiff to access the suit property through the defendant's adjacent property, LR No 9042/583. He has stated that the property was not the subject of this suit and/or court process. He has stated that access to the suit property and LR No 9042/583 from Airport North Road is under the management and control of Kenya Airports Authority(KAA). He has stated that the plaintiff had since been granted access by KAA and it is using the said access route to access the suit property. He has stated that this fact has been admitted by the plaintiff and that its only complaint is that the access route is busy and inconvenient. He has stated that there is no access road or easement through LR No 9042/583 to the suit property and that the same has been fenced for security reasons. He has stated that the plaintiff has been using the suit property since the defendant complied with the court order and that it was not clear why the plaintiff had decided to lease other premises. He has urged the court to dismiss the application.

15. The second affidavit is sworn by Michael Joseph on April 27, 2022. Michael Joseph has adopted the affidavit of Habil Waswani sworn on April 22, 2022, the contents of which I have highlighted above. He has stated that he is a non-executive chairman of the defendant and as such he is not involved in the day today running of the affairs of the defendant. He has stated that he was informed by Habil Waswani that the defendant had complied with the orders that were issued by the court on August 5, 2021 and September 23, 2021. He has stated that in the circumstances, the plaintiff's application is misconceived and devoid of any merit.
16. The third replying affidavit is sworn by Allan Kilavuka on April 27, 2022. He has also adopted the affidavit of Habil Waswani sworn on April 22, 2022. He has stated that he had been briefed by Habil Waswani that the defendant had complied with the court orders made on August 5, 2021 and September 23, 2021. He has stated that in view of the foregoing, the plaintiff's application is devoid of merit and should be dismissed with costs.
17. The plaintiff's application was heard by way of written submissions. The plaintiff filed submissions dated July 5, 2022 while the defendant filed submissions dated July 8, 2022. I have considered the plaintiff's application together with the affidavit filed in support thereof. I have also considered the affidavits filed by the respondents/alleged contemnors in opposition to the application. Finally, I have considered the submissions by the advocates for the parties. The issues arising for determination in the application before me are, whether the defendant breached the orders that were made herein on August 5, 2021 and September 23, 2021 and if so, whether the respondents should be punished for that breach and the plaintiff compensated for the loss it has suffered as a consequence of the breach. I wish to dispose of the limb of the application seeking compensation for the loss incurred as a result of the defendant's alleged breach of the said court orders before considering whether there was such a breach or not.
18. On this issue, I am in agreement with the defendant that the claim for damages in the form of rent and service charge being paid by the plaintiff for alternative premises cannot be recovered in the present application. I am of the view that the claim is in the nature of special damages that should be pleaded in the plaint with the necessary particulars and strictly proved at the trial. The court is not in a position to determine on the affidavit evidence on record whether alternative premises leased by the plaintiff were necessary and justified and whether the rent and service charge claimed were paid by the plaintiff. In the circumstances, the limb of the application seeking compensation for rent and service charge paid by the plaintiff for alternative premises is not for granting.



19. I will now consider the remaining issues namely, whether the defendant breached the court orders aforesaid and if so, whether the respondents should be punished for the breach. In *Hardkinson v Hardkinson* [1952] ALL ER 567, the court stated that:

“It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a court of competent jurisdiction to obey it unless and until it was discharged and disobedience of such order would as a general rule result in the person disobeying being in contempt and punishable by committal or attachment and in an application to the court by him not being entertained until he had purged his contempt.”

20. In *Mutitika v Baharini Farm Ltd* [1985] KLR 227 it was held that:

- i. “A person who knowing of an injunction, or an order of stay, willfully does something, or causes others to do something, to break the injunction, or interfere with the stay, is liable to be committed for contempt of court as such a person has by his conduct obstructed justice.
- ii. The standard of proof in contempt proceedings must be higher than proof on a balance of probabilities and almost but not exactly beyond reasonable doubt.
- iii. The principle must be borne in mind that the jurisdiction to commit for contempt should be carefully exercised with great reluctance and anxiety on the part of the court to see whether there is no other mode which can be brought to bear on the contemnor.”

21. In *Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 others* [2018] eKLR the Court of Appeal set out the law on contempt as follows:

“It is trite that to commit a person for contempt of court, the court must be satisfied that he has willfully and deliberately disobeyed a court order that he was aware of. That is made absolutely clear by section 4 of the *Contempt of Court Act* and the ruling of the Supreme Court in *Republic v Ahmad Abolfathi Mohammed & Another* (supra). Secondly, as this court emphasized in *Jihan Freighters Ltd v Hardware & General Stores Ltd* and in *A.B & another v R. B* [2016] eKLR, to sustain committal for contempt of court, the order of the court that is alleged to have been deliberately disobeyed must be clear and precise so as to leave no doubt as to what a party was supposed to do or to refrain from doing. Lastly, the standard of proof in committal proceedings is higher than proof on a balance of probabilities, though not as high as proof beyond reasonable doubt. (See *Mutitika v Baharini Farm* (supra) and *Republic v Ahmad Abolfathi Mohammed & Another* (supra).”

22. In *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR, the court stated as follows:

“We now revisit the issue of service. Was there service of the order said to have been disobeyed on the respondent? There is no dispute that no formal order was extracted and personally served on the respondent and an affidavit of service filed to that effect. In that respect, this case can be distinguished from *Justus Kariuki Mate & another v Hon Martin Wambora (Wambora case)* supra cited by learned counsel for the applicant. On the other hand however, this court has slowly and gradually moved from the position that the order along with the penal notice must be personally served on a person before contempt can be proved. This is in line with the dispensations covered under 81.8 (1) (supra). Kenya's growing jurisprudence right from the High Court has reiterated that knowledge of a court order suffices to prove service and dispense with personal service for the purposes of contempt



proceedings. For instance, Lenaola J in the case of *Basil Criticos v Attorney General and 8 others* [2012] eKLR pronounced himself as follows:-

“...the law has changed and as it stands today knowledge supersedes personal service.....where a party clearly acts and shows that he had knowledge of a court order; the strict requirement that personal service must be proved is rendered unnecessary”

This position has been affirmed by this court in several other cases including the *Wambora case* (supra). It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or notice of the existence of the order of the court forbidding it. The threshold is quite high as it involves possible deprivation of a person’s liberty.

.....Would the knowledge of the judgment or order by the advocate of the alleged contemnor suffice for contempt proceedings? We hold the view that it does. This is more so in a case such as this one where the advocate was in court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in court on instructions of a party, then it behoves him/her to report back to the client all that transpired in court that has a bearing on the client’s case.”

23. It is on the foregoing principles that the plaintiff’s application falls for consideration. I am satisfied that the plaintiff has established the acts of contempt alleged against the defendant in respect of the orders made herein on August 5, 2021 and September 23, 2021. It is common ground that the orders were issued by the court. The terms of the said orders and service thereof upon the defendant are not disputed. What is in dispute is whether the defendant complied with the same. The order of August 5, 2021 required the defendant to restore the plaintiff to the suit property. I am satisfied from the evidence before the court that the defendant vacated the suit property and surrendered possession of the same to the plaintiff. In the circumstances, this order was complied with.
24. The order made on September 23, 2021 on the other hand required the defendant to open the access route to the suit property from Airport North Road and restrained the defendant from interfering with the suit property. From the evidence before me, I am satisfied that after the defendant restored the plaintiff to the suit property following the order made on August 5, 2021, the defendant has not interfered with the property. However, that was only one limb of the order. It is my finding that the defendant has not complied with the limb of the order that required it “to open the access route to the plaintiff’s premises, land reference No 9042/584 from Airport North Road..”. As the court had observed in the ruling made on September 23, 2021, the plaintiff had over the years accessed the suit property from Airport North Road through the defendant’s parcel of land known as LR No 9042/583. When the plaintiff came to court, its complaint was that the defendant had evicted it illegally from the suit property and blocked its access to the property from Airport North Road. That is why the court noted in its ruling of September 23, 2021 that since the plaintiff had used the route through the defendant’s parcel of land known as LR No 9042/583 all along to access the suit property, that right could only be taken away with the consent of the plaintiff or through a lawful court order.
25. The defendant was aware that “the access route to the suit property from Airport North Road” that it was required by the court to open in the order made on September 23, 2021 was the route that the plaintiff had used all along through the defendant’s parcel of land known as LR No 9042/583. The defendant has not convinced me that prior to its eviction from the suit property on July 23, 2021, the plaintiff was using any other route to access the suit property other than the access route through LR



No 9042/583. Whereas the defendant has claimed that it has complied fully with the order made by the court on September 23, 2021 with regard to opening access route to the suit property, the defendant has not told the court which access to the suit property it has opened for the plaintiff from Airport North Road.

26. The defendant's Director of Legal Services and Company Secretary, Habil Waswani knew very well that the said court order required the defendant to remove the blockade it had placed on the route that the plaintiff used to access the suit property through LR No 9042/583 from Airport North Road. Mr Waswani whom I believe is an officer of this court defiantly informed the plaintiff's advocates that the defendant will not comply with that requirement. In *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] 1 KLR 828 the court cited the case of *Gulabchand and Popatlal Shah & another*, civil application No 39 of 1990 in which the Court of Appeal stated that:

"...It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors..."

27. In *Central Bank of Kenya & another v Ratilal Automobiles Limited & others* civil application No Nai 247 of 2006, the court stated that:

"Judicial power in Kenya vests in the courts and other tribunals established under the *Constitution* and that it is a fundamental tenet of the rule of law that court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a court of law."

28. In *Awadh v Marumbu (No 2)* No 53 of 2004 [2004] KLR 458, it was held that:

"It must be remembered that court orders must be obeyed at all times in order to maintain the rule of law and good order. This of course means that the authority and dignity of our courts must be upheld at all times and this differentiates civilised societies from those applying the law of the jungle at times referred to as banana republics. It is the duty of the court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with the approved contemnors."

29. I am in agreement with the plaintiff that the order made by the court on September 23, 2021 was unambiguous and did not require interpretation. I have no doubt in my mind from the dispute as a whole that the defendant knew what was required of it by the order but chose intentionally to defy the order. Even if the defendant had any doubt as to what was required of it, the door of the court was open. In *Wildlife Lodges Ltd v County Council of Narok and another* [2005] 2 EA 344 (HCK) the court stated as follows:

"...Had there been any misapprehension in the minds of the defendants, then the expectation of them is that they would have made an application to the court for the resolution of any misunderstanding; this would have been the lawful course of action... Against this background, I would take the position that consistent obedience to court orders is required, and parties should not take it upon themselves to decide on their own which court orders are to be obeyed and which ones overlooked, in the supposition that this oversight will not impede the process of justice..."



30. Due to the foregoing, it is my finding that the defendant disobeyed and is still in disobedience of the orders made by the court on September 23, 2021. Since the disobedience was of an order of injunction, the plaintiff did not require leave to bring the present application. As for the person/s to punish for the defendant's contempt, I am of the view from the evidence before the court, that the defendant's Director of Legal Services and Company Secretary takes full responsibility for the disobedience of the orders of the court issued herein. He knew of the said order, defiantly stated that the defendant will not comply with the same, failed to comply and gave the defendant's Chief Executive Officer(CEO), Allan Kilavuka and Chairman, Michael Joseph wrong information that the defendant had complied. I therefore find the defendant Kenya Airways PLC and its Director of Legal Services and Company Secretary, Habil Waswani in contempt of court.
31. The defendant's Director of Legal Services and Company Secretary, Habil Waswani shall appear before the court on a date to be fixed to address the court in mitigation before the court passes a sentence against him and the defendant. The defendant is at liberty to purge its contempt before then.

**DATED AND DELIVERED AT KISUMU THIS 10<sup>TH</sup> DAY OF NOVEMBER 2022**

**S. OKONG'O**

**JUDGE**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Ms. Wanjiru h/b for Mr. Mwenesi for the Plaintiff

Mr. Kiragu for the Defendant

Ms. J. Omondi -Court Assistant

