



REPUBLIC OF KENYA



KENYA LAW

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**Wanjala & 3 others v Chief Magistrates Court at Milimani; Quadco
Two Hundred & Thirty-Two Ltd (Interested Party) (Criminal Appeal
E170 of 2022) [2025] KEHC 418 (KLR) (Crim) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 418 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPEAL E170 OF 2022
K KIMONDO, J
JANUARY 23, 2025**

BETWEEN

**MICHAEL MBIRIRA WANJALA & 3 OTHERS & 3 OTHERS & 3 OTHERS & 3
OTHERS APPELLANT**

AND

THE CHIEF MAGISTRATES COURT AT MILIMANI RESPONDENT

AND

QUADCO TWO HUNDRED & THIRTY-TWO LTD INTERESTED PARTY

RULING

1. The appellants lodged this appeal challenging the ruling and order dated 30th September 2022 by the Nairobi Chief Magistrates Court at Milimani Commercial Court (hereafter the lower court or 1st respondent). The impugned order found the 1st and 2nd appellants in contempt of court and summoned them to “voluntarily appear in court for further orders or come under warrants of arrest”.
2. I should add that on 17th January 2023, the High Court (Bwonwonga J) stayed the sentencing of the contemnors scheduled by the lower court on 18th January 2023 until the hearing of this appeal.
3. The interested party then filed a preliminary objection dated 31st July 2024 to strike out the appeal for want of jurisdiction. Its pith is that under section 10 (7) of the Magistrates Courts Act, an appeal only lies upon an order of the lower court punishing a contemnor for contempt of court.
4. It is argued that although the lower court in its ruling dated 20th September 2022 found the 1st and 2nd appellants had breached the orders made on 4th December 2020, 19th October 2021, 9th November 2021 and 11th November 2021, it has not yet sentenced the appellants.



5. The interested party relied largely on its brief submissions dated 16th September 2024 together with a bundle of authorities and case digest.
6. The appellants on the other hand contended that section 10 (7) of the Magistrates Courts Act is permissive and allowed an appeal against an order in the course of contempt proceedings. Furthermore, the jurisdiction of the High Court under Article 165 of *the Constitution* in civil and criminal matters is unlimited. It was thus submitted that the grund norm superseded the Magistrates Courts Act.
7. The appellants also relied on the deposition of their counsel, Mr. F. Okeyo, sworn on 2nd October 2024 which basically restated the above arguments.
8. On 30th October 2024, I heard further arguments from the learned counsel for the interested party and the appellants.
9. I take the following view of the matter. It is trite that Article 165 of *the Constitution* confers upon the High Court unlimited original jurisdiction in civil and criminal matters. However, the right to an appeal can be circumscribed by statute. The orders the subject matter of the contempt proceedings were issued by the Business Rent Tribunal and adopted by the Chief Magistrates Court sitting at Milimani. In the penultimate paragraph of the impugned ruling, the lower court stated as follows-

For the foregoing reasons, I am satisfied that the two respondents have disobeyed the orders of the Tribunal and as adopted by this Court in subsequent proceedings. I direct that the Respondents voluntarily appear in court for further orders or come under warrants of arrest.
10. So much so that there is no doubt that the lower court convicted the two appellants for contempt and they were to appear before the court for further orders either voluntarily or under a warrant of arrest. In short, they were awaiting sentencing or any other order by the court. So, does an appeal lie before such sentencing?
11. The answer is found in section 10 the Magistrates Court Act. The section is entirely devoted to the contempt of court in its various forms and applicable sentences. Subsection 1 grants Magistrates Courts power to punish for contempt. Subsection 7 provides as follows-

A person may appeal against an order of the Court made by way of punishment for contempt of court as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the Court.
12. My understanding is that the appeal only lies against an order of the court made by way of punishment for contempt of court. In that event, the order would be treated as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the Court.
13. As matters now stand, no order has been made by the lower court by way of punishment for contempt of court. Accordingly, this appeal is premature. Paraphrased, the High Court is not seized, at the moment, of jurisdiction to entertain it. Jurisdiction is everything; and without it, a court must lay down its tools. Motor Vessel Lilian “S” v Caltex oil [1989] KLR 1.
14. For all of those reasons, the appeal be and is hereby struck out. I make no order on costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JANUARY 2025.

KANYI KIMONDO

JUDGE



Ruling read virtually on Microsoft Teams in the presence of: -

Ms. Kilonzo for the interested party/applicant instructed by Kilonzo & Company Advocates.

Mr. Okeyo for the appellants/respondents instructed by Otieno Okeyo & Company Advocates.

Mr. E. Ombuna, Court Assistant.

