



REPUBLIC OF KENYA



**Asiyo v Odhiambo (Commercial Case E011 of 2023)
[2025] KEHC 1558 (KLR) (12 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1558 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
COMMERCIAL CASE E011 OF 2023**

FR OLEL, J

FEBRUARY 12, 2025

**IN THE MATTER OF SECTION 17 OF THE
MATRIMONIAL PROPERTY ACT NO 49 OF 2013**

AND

IN THE MATTER OF; AN APPLICATION FOR DECLARATION OF PROPERTY RIGHTS

BETWEEN

JUDITH AKOTH ASIYO APPLICANT

AND

KENNEDY OCHIENG ODHIAMBO RESPONDENT

RULING

A. Introduction

1. The application before the court for determination, is the Notice of Motion application dated 9th April 2024 brought pursuant to provisions of Section 1, 1A, 3, 3A & 95 of the *Civil Procedure Act*, Order 40 Rule 3(1) and 51 rule 1 of the *Civil Procedure Rules*, and all other enabling provision of law. The Defendant/Applicant seeks for orders that;
 - a. Spent
 - b. That Kennedy Ochieng Odhiambo, the respondent herein be cited for contempt and detained in prison for a term of not exceeding six months for blatantly disobeying the orders issued by the Honourable court on 26.10.2023.
 - c. That this honourable court be pleased to deny Kennedy Ochieng Odhiambo audience in this matter until and unless he purges the contempt of the court committed herein.



- d. That the respondent be directed to deliver Motor vehicle Registration Number KCC 367E, Toyota Harrier to Athi River police station for safe custody pending hearing and determination of the suit or further orders of this Honorable court.
 - e. That the officer commanding Athi River police station to ensure compliance with order (4) above.
 - f. That this Honourable court be pleased to grant any other order it deems fit and just to grant.
 - g. That costs of this Application be borne by the Respondent.
2. The said application is supported by the ground stated on the face of the said application and the supporting affidavit of the applicant who deponed that this court had issued injunctive orders preventing the respondent from disposing off the suit property and her advocated effected service of the said order on the respondent through whatsapp vide his phone number 0722893983. He duly acknowledged the same by responding thereto and stating; "Thanks and noted".
 3. The orders issued on 26.10.2023 had been subsequently extended by consent in the presence of the respondent advocate, but to her surprise, the respondent in blatant disregard of the subsisting court order had changed the registration of the suit motor vehicle from her name to his name. His action was illegal as she had not approved the same and had formally also complained to the police.
 4. Every party to a suit had an unqualified obligation to obey all the court orders issued, unless the same is discharged. The respondent's action was clearly an affront to the rule of law and integrity of the judicial process, and thus the respondent ought to be punished for being in contempt of the clear orders earlier issued restraining him from disposing off the matrimonial property.
 5. The Respondent opposed this Application through his replying affidavit (wrongly) dated 8th April 2023, wherein he averred that the said application was misconceived and bad in law for the reason that, he had not disposed of the suit motor vehicle as alleged to any third party nor had he transferred the said motor vehicle to himself.
 6. It was to be noted that the suit motor vehicle was registered under the applicant's name, though he was the one who bought it from one NAWAZ M CHAUDREY for a sum of Kshs 1,800,000/=. He therefore had an equitable interest therein. The respondent also questions how the applicant got herself registered as the owner of the suit motor vehicle, yet he still held the original logbook and had not surrendered the same to NTSA.
 7. The respondent therefore prayed that this Application be dismissed with costs.

B. Analysis & Determination

8. I have carefully considered the Application, its supporting affidavit, and the response filed in opposition thereto. The only issue that arises for determination is whether the Applicant has proved that the respondent is in contempt of the court order earlier issued herein restraining him from disposing off and/or selling the matrimonial properties.
9. The Black's Law Dictionary, defines contempt as;
 - (14) "Contempt is a disregard if, 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."



10. In the High Court of South Africa in the case of *Kristen Carla Burchell vs. Barry Grant Burchell*, Eastern Cape Division Case No. 364 of 2005, the court held that in order to succeed in civil contempt proceedings, the applicant has to prove: -
 - i. the terms of the order,
 - ii. Knowledge of these terms by the Respondent,
 - iii. Failure by the Respondent to comply with the terms of the order
11. The learned authors of the book ‘Contempt in Modern New Zealand’ also succinctly stated that :-

“There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:

 - (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
 - (b) the defendant had knowledge of or proper notice of the terms of the order;
 - (c) the defendant has acted in breach of the terms of the order; and
 - (d) the defendant’s conduct was deliberate.
12. I find that the terms of this court orders issued on 26.10.2022 were clear and concise, the same were serve upon the respondent and he acknowledge receipt of the whatsapp message forwarding the said order to his phone 0722893983. The said service was also affirmed in the affidavit of service of the process server Simon M Valela dated 01.11.2023.
13. The applicant also annexed NTSC search dated 24.10.2023 and 27.03.2024. Under the initial search, the suit property was still under her name and has subsequently been changed to the respondent’s name. It is clear that this was done fraudulently and in utter contempt of the earlier orders issued herein
14. In *Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another* [2005] 1 KLR 828 Ibrahim J. (as he then was) relied on the Court of Appeal decision in *Gulabchand Popatlal Shah & Another* civil application no. 39 of 1990, (unreported), the Court of Appeal said:

“..... It is essential for the maintenance of the Rule of Law and good order that the authority and dignity of our courts are upheld at all times. This court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors”
15. It was held by the Constitutional Court of South Africa in *Burchell v. Burchell*, Case No 364/2005 that:-

“Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. *The Constitution* states that the rule of law and supremacy of *the Constitution* are foundational values of our society. It vests the judicial authority of the state in the courts and requires other organs of state to assist and protect the courts. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. Failure to enforce court orders effectively has the potential to undermine



confidence in recourse to law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law.

16. The court's view is that the conduct of the Respondent clearly establishes disobedience of the court orders.
17. The Court associates itself with Mwita J. in *Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui* [2021] eKLR who was of the view that even as courts punish for contempt to safeguard the peaceful and development of society and the rule of law, it must be borne in mind that the power to punish for contempt is a discretionary one and should be used sparingly.
18. The Court finds the commendable orders to make as a way giving the Respondent an opportunity to purge the contempt.

Disposition

19. Having arrived at the arrived at the above finding I do order as follows
 - (a) The Respondent's sentencing for contempt of court is suspended for 60 days to allow him purge contempt of Court.
 - (b) The costs of this Application is awarded to the Applicant.
20. It is so Ordered

READ, SIGNED, AND DELIVERED VIRTUALLY AT MARSABIT ON THIS 12TH DAY OF FEBRUARY, 2025.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAM THIS 12TH DAY OF FEBRUARY, 2025.

In the presence of: -

No appearance for Applicant

No appearance for Respondent

I.Jabo Court Assistant

