



**Ndirangu v U & I Microfinance Bank (Miscellaneous Civil Case
E132 of 2024) [2025] KEHC 2446 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2446 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CIVIL CASE E132 OF 2024
FN MUCHEMI, J
FEBRUARY 6, 2025**

BETWEEN

DAVID MUNENE NDIRANGU APPLICANT

AND

U & I MICROFINANCE BANK RESPONDENT

RULING

Brief facts

1. The application for determination dated 25th March 2024 seeks for orders that the branch manager of the respondent Thika Branch and the respondent's Chief Executive Officer are in contempt of the orders of Hon. D. Milimu Senior Resident Magistrate in the Chief Thika CM Civil Suit No. 657 of 2022 issued on 5th December 2022. The applicant further seeks that the said Branch Manager and Chief Executive Officer of the respondent be arrested and committed to prison for a term of not exceeding six (6) months. The applicant further seeks that the respondent should not be heard by this court until they purge the said contempt. As such, the proceedings before this court are for contempt of court whereas the respondent herein challenges the jurisdiction of this court and argues that the court which issued the orders is possessed of the requisite jurisdiction to hear and determine this application.
2. The applicant states that on 5th December 2022, Honourable D. Milimu (SRM) in Thika CM Civil Suit No. 657 of 2022 granted a temporary injunction against the respondent restraining it and its appointed agents from repossessing motor vehicle registration number KDE 299N. After being served with the order, the respondent proceeded to sell the said vehicle.
3. The respondent states that the order upon which this application is based was issued Thika in CMCC No. 657 of 2022. As such, this application for contempt of court ought to be filed before the court that issued the order and not before this court for the Magistrate Court is vested with jurisdiction to determine the application. This application is not properly before the court and should be struck out



4. In response, the applicant states that the respondent's averments regarding the jurisdiction of the High Court to hear and determine the instant application is a misrepresentation of the law. Pursuant to the ruling in *Kenya Human Rights Commission v Attorney General & Another* [2018] eKLR, the *Contempt of Court Act* was nullified. Prior to the enactment of the *Contempt of Court Act*, the *Judicature Act* under Section 5 gave the High Court the jurisdiction to hear contempt applications. Section 38 of the nullified Contempt of Court Act had repealed Section 5 of the *Judicature Act*. Thus, the applicant argues that in light of the nullification of the Contempt Act, the *Judicature Act* continues to be the primary act for the purposes of contempt applications. The applicant thus states that the instant application is before the High Court which is possessed of the requisite jurisdiction.
5. Parties put in written submissions.

The Applicant's Submissions

6. The applicant relies on the cases of *Alfred Mutua v Boniface Mwangi* [2022] eKLR and *Katsuri Limited v Kapurchand Depar Shah* [2016] eKLR and submits that the instant application for contempt has been filed in the right court and the court has jurisdiction to determine the application pursuant to Section 5 of the *Judicature Act*.
7. The applicant further relies on Article 165(2)(a), (6) & (7) of the *Constitution* and submits that the instant court has supervisory jurisdiction over the magistrates courts and handling the instant application will not amount to usurping the duties of the magistrate's court.
8. The applicant relies on Order 40 Rule 3 of the *Civil Procedure Rules* and the cases of *Duncan Mamel Murigi v Kenya Railway Corporation* (2008) eKLR and *Republic v Mohammed & Another Petition* 39 of 2018 (2019) KESC 47 (KLR) and submits that contempt of court is an offence of a criminal nature which may be punishable with a jail term.

The Respondent's Submissions

9. The respondent relies on Section 10(3) of the *Magistrate's Court Act* and submits that it is the magistrate's court and not the instant court that retains exclusive and inherent jurisdiction to deal with contempt arising from its own orders. Thus, the respondent argues that any contempt proceedings should be heard and determined by the magistrate's court in Thika and allowing the instant court to proceed would interfere with the jurisdiction of the magistrate's court which is not only improper but also a violation of established legal principles.
10. The respondent relies on the case of *Tricom Technologies Ltd v Nextgen Office Suites* [2018] KEHC 5328 (KLR) and submits that the instant application ought to be struck out for being improperly before the instant court.
11. The respondent further submits that the applicant's request for a jail term not exceeding six months is based on Section 28 of the *Contempt of Court Act*, 2016, a provision that has since been repealed. The respondent submits that the Contempt of Court Act, 2016 was declared unconstitutional and invalid by the High Court in *Kenya Human Rights Commission v Attorney General & Another* [2018] eKLR. Consequently, contempt proceedings are currently governed by the court's inherent jurisdiction and common law principles.
12. The respondent prays that the instant application be dismissed in its entirety with costs to them for the reasons that the applicant has filed the application in the wrong court. For this court to allow the application to proceed before it would be against the provisions of the law and is contrary to the proper function and hierarchy of the Kenyan judicial system.



The Law

Whether the court has jurisdiction to hear and determine the application dated 1st September 2023.

13. The law on the question of jurisdiction was enunciated in the case of Owners of the Motor Vessel “Lilian S” v Caltex Kenya Limited [1989] KLR 1 where the court held:-

Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction...Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.

14. Jurisdiction is a very fundamental issue that it can be raised at any time including on appeal. This principle was stated by the Court of Appeal in Kenya Ports Authority v Modern Holding [EA] Limited [2017] eKLR as follows:-

We have stressed that jurisdiction is such a fundamental matter that it can be raised at any stage and even on appeal, though it is always prudent to raise it as soon as the occasion arises. It can be raised at any time, in any manner, even for the first time on appeal, or even viva voce and indeed, even by the court itself provided that where the court raises it suo motu parties are to be accorded the opportunity to be heard.

15. On the source of jurisdiction, it was held in the case of Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & Others (2012) eKLR that:-

A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.

16. The application has been premised on an order made by Honourable D. Milimu (SRM) in Chief Magistrate’s Court Thika in Civil Suit No. 657 of 2022 on 5th December 2022. The applicant argues that he filed the instant application in this court as the magistrate court has no jurisdiction to hear and determine applications on contempt of court proceedings.

17. The Magistrates’ Court [Act No. 26 of 2015](#) commenced on 2nd January 2016 and confers jurisdiction for hearing and determining contempt of court proceedings.

Section 10 provides:-

- (1) Subject to the provisions of any other law, the Court shall have power to punish for contempt.
- (3) in the case of civil proceedings, the wilful disobedience of any judgment, decree, direction, order, or other process of a court or wilful breach of an undertaking given to a court constitutes contempt of court.

18. The word “Court” refers to the court which issued such orders, decree that is alleged to have been disobeyed. The orders the applicant seeks against the respondent to be cited for contempt emanated from the magistrate’s court in Civil Suit No. 657 of 2022. The Magistrates Courts Act confers jurisdiction to magistrates’ courts to hear and determine contempt proceedings in matters before them. The magistrate’s court that issued the orders is therefor vested with the jurisdiction to hear and determine any contempt proceedings arising from its orders. This said application ought to have been filed before the Magistrate who issued the orders in question and not and not in the High Court.



19. Consequently, I find the preliminary objection merited. The application dated 1st September 2023 is not properly before this court and is hereby struck out with costs to the respondent.
20. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 6TH DAY OF FEBRUARY 2025.

F. MUCHEMI

JUDGE

