



**Paleah Stores Limited & 3 others v Mwaura & 15 others; Mwangi & 2 others (Contemnor);
Invesco Assurance Company Limited (Under Receivership) (Interested Party)
(Insolvency Petition 1 of 2019) [2025] KEHC 1609 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1609 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
INSOLVENCY PETITION 1 OF 2019
RM MWONGO, J
FEBRUARY 20, 2025
(ALSO KNOWN AS CONSTITUTIONAL PETITION NO.1 OF 2019)
IN THE MATTER OF INVESCO ASSURANCE
COMPANY LIMITED (UNDER RECEIVERSHIP)
AND
IN THE MATTER OF THE INSOLVENCY ACT NO. 18 OF 2015
AND
IN THE MATTER OF BREACH AND THREATENED
BREACH OF ARTICLE 40 OF THE CONSTITUTION
AND
IN THE MATTER OF BREACH AND THREATENED BREACH
OF ARTICLE 47 OF THE CONSTITUTION OF KENYA**

BETWEEN

**PALEAH STORES LIMITED 1ST PETITIONER
PATRICK NJIRU KURIA 2ND PETITIONER
KENYA MPYA LIMITED 3RD PETITIONER
NEO KENYA COMMUTERS LIMITED 4TH PETITIONER**

AND

**DEDAN KANGETHE MWAURA 1ST RESPONDENT
EVANS ODHIAMBO OTIENO 2ND RESPONDENT
AN (MINOR SUED THROUGH BMW) 3RD RESPONDENT
SALOME NYAMBURA KIRIKA 4TH RESPONDENT**



TITUS MUTHINI	5 TH RESPONDENT
JOB WEKESA WANJALA	6 TH RESPONDENT
BENIGNANCE MUKONYO WAMBUA	7 TH RESPONDENT
HELLEN WAMBUI KARIUKI	8 TH RESPONDENT
AGNES NJERI	9 TH RESPONDENT
FRANCIS NDUNGU WANGOMBE	10 TH RESPONDENT
OLWANGUHI AMAKANJI THOMAS	11 TH RESPONDENT
JACINTA WANJIRU MWANGI	12 TH RESPONDENT
LUCY NJURA PETER	13 TH RESPONDENT
MIRRIAM WANJIRU MAINA	14 TH RESPONDENT
LUCY KAIGONGI MUCHENA	15 TH RESPONDENT
JOSEPH MUTWIRI NDEGWA	16 TH RESPONDENT

AND

JAMLICK KIHU MWANGI	CONTEMNOR
PETER WAIRIMU T/A BEALINE KENYA AUCTIONEERS	CONTEMNOR
JOHN MBIJIWE T/A BEALINE KENYA AUCTIONEERS	CONTEMNOR

AND

INVESCO ASSURANCE COMPANY LIMITED (UNDER RECEIVERSHIP)	INTERESTED PARTY
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RULING

1. The 4th Petitioner/Applicant filed the present notice of motion dated 11th December 2024 which seeks the following orders, that:
 1. Spent;
 2. The Notice of Sale dated 9th December 2024 and coming up for sale on 17th December 2024 be quashed;
 3. Pending the hearing and determination of this application, the contemnors, their agents, or any person acting under their instructions be ordered to forthwith unconditionally release Motor Vehicle KBV 223 X in good working Condition and any other Motor Vehicles or properties belonging to the Petitioners herein under their Custody or in the custody of their agents, or any person instructed by the Contemnors on account of Milimani Cmcc E3202 Of 2020 Jamlick Kihui Mwangi v. Nicholas Mashuli & Neo Kenya Mpya Commuters Ltd;
 4. Pending the hearing and determination of this application, the Contemnors, their agents, or any person acting under their instructions be and are hereby restrained from selling by Auction or any other means Motor Vehicle KBV 223 X and any other Motor Vehicles or properties



belonging to the Petitioners herein under their Custody or in custody of their agents, or any person instructed by the Contemnors on account of Milimani CMCC E3202 Of 2020 Jamlick Kihui Mwangi v. Nicholas Mashuli & Neo Kenya Mpya Commuters Ltd;

5. The Contemnors, Jamlick Kihui Mwangi and Peter Wairimu be punished and committed to Civil Jail for a period not exceeding six (6) months and or pay a fine of Kshs. 300,000 each for willfully and contemptuously disobeying the Honourable Court's Orders issued by this Honourable Court on 16th December 2019;
 6. The Contemnors to meet any costs that may have been incurred by any third parties in the Course of their Contemptuous actions, such as but not limited to, proclamation costs, auctioneer costs, storage costs and any other costs in relation to their actions;
 7. The Contemnors to pay Kshs. 23,000/= per day being business loss from the day of impoundment 9th December 2024 to the day of the release of motor vehicle KBV 223 X and any other Motor Vehicle per motor vehicle belonging to the Petitioners;
 8. The court does issue and order for assistance by the police in effecting of the Court's Orders; and
 9. The cost of this application be borne by the Contemnors on full indemnity basis.
2. The application arises from the fact that on 16th December 2019, this court (Hon. L.W. Gitari, J.) issued the following orders:

"That pending the hearing and determination of this application, an interim conservatory order be and is hereby granted restraining the enforcement and/or execution of any judgments made in favour of the respondents or any other claimant by any court against the petitioners in respect of any one or more of the petitioners' motor vehicles insured by the interested party"

"That pending the hearing and determination of this application, an interim conservatory order be and is hereby granted restraining the respondents or any other claimant either acting by themselves or through their representatives from attaching, detaining or retaining any motor vehicles or any assets of the petitioners in enforcement and/execution of any judgments made by any court against the petitioners in respect of any one or more of the petitioner's motor vehicles insured by the interested party."

"That pending the hearing and determination of this application an interim conservatory order be and is hereby granted staying all road traffic accident third party lawsuits and legal proceedings against the petitioners in respect of any one or more of the petitioner's motor vehicles insured by the interested party."

3. According to the 4th Applicant/Petitioner, despite these orders, the contemnors impounded the 4th applicant's motor vehicle registration number KBV 223X and issued a notification of sale. The motor vehicle was impounded on the strength of orders from Milimani CMCC E3202 of 2020 in which the 1st contemnor was the plaintiff and where the court had ordered:

'This Honorable Court is hereby pleased to grant an interim order restraining the enforcement and/or execution of any judgment and decree passed by this Honorable court, against the 2nd Defendant herein with respect to court orders given by the Hon. L.W. Gitari at Kerugoya High Court in Insolvency Petition Number 1 of 2019 - In the Matter of Invesco Assurance Limited as attached to this application.'



'There be stay of proceedings herein pending the hearing and determination of Insolvency Petition Number 1 of 2019 - at Kerugoya High Court, being in the Matter of Invesco Assurance Limited.'

4. Notwithstanding these orders, the 1st contemnor proceeded to instruct the 2nd and 3rd contemnors to impound the motor vehicle regardless of the orders by these courts. This prompted the application herein. The applicant urged that it is in the interest of justice that the orders sought herein be granted, otherwise, it will suffer prejudice and injustice.
5. Through his replying affidavit, the 1st contemnor stated that that the orders of this court by Hon. L.W. Gitari, J. are not in place on account of orders given in Nairobi HC Insolvency Petition No. E155 of 2019, a copy of which he produced. That this court is functus officio regarding the insolvency issue and that, in any event, injunctive orders cannot be in place for more than 5 years. He deposed that an *ex parte* injunction is granted once for 14 days and may be extended for a further 14 days but here, that did not happen. He cited irregularity on the part of the High Court giving injunctive orders that tie up all other courts. He said he did not know about the orders of the court until he was served with the application herein. He stated that his plight, and that of many other respondents, is being downplayed by the court.
6. The 3rd contemnor filed a replying affidavit stating that he received instructions from the 1st contemnor to execute a court order arising from Milimani CMCC E3202 of 2020. He proceeded and proclaimed the assets of the applicant knowing that the orders given in Nairobi HC Insolvency Petition No. E155 of 2019 had lapsed and had not been extended.

Issue for Determination

7. The sole issue for determination is whether the application has merit.
8. The petition dated 11th December 2019 filed by the petitioners was erroneously names 'insolvency petition'. Counsel for the petitioners notified the court that it is a constitutional petition. From its perusal, it is seeking the declaration of rights in *the constitution*. Given the nature of the petition, the court gave an interim conservatory order to preserve the subject matter pending determination of the petition. The interim conservatory order is still in place since the petition is yet to be determined.
9. The contemnors' argument that an injunction can only be granted once for 14 days and be extended once does not hold water. A perusal of the orders given by Gitari J, on 16th December, 2019 clearly shows that what the Court signed were "Interim Conservatory Orders". They emanate from prayers 4, 5 and 6 of the Notice of Motion dated 11th December, 2019 filed by the Applicant. No reference is made in the application to temporary injunctions.
10. Order 40 of the Civil Procedure Rules on injunctions cannot therefore apply in this case as the court did not grant a temporary injunction. Further, the constitutional issues raised in the substantive petition are yet to be determined by the court. This means that the orders of this court are still in place and have not lapsed. In the result, it is clear that the contemnors elected to disobey the court's order, thus they should be held in contempt.



11. In the case of Sam Nyamweya (President), Robert Asembo (Vice President), Michael Esakwa (Secretary General) & Football Kenya Federation v Kenya Premier League Limited, Kenya Football Referees Association & Sports Kenya [2015] KEHC 6265 (KLR), it was observed:

“The power to punish for contempt is an important and necessary power for protecting the cause of justice and the rule of law, and for protecting the authority of the court and the supremacy of the law.”

12. Further, in the case of Board of Governors, Moi High School, Kabarak & another v Bell & 2 others [2013] KESC 12 (KLR), the Supreme Court of Kenya stated:

“....The reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. It is about assuring a party who walks through the justice door with a court order in his hands that the order will be obeyed by those to whom it is directed..... A court order requiring compliance is not a mere suggestion or an opinion or a point of view. It is a command that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance should never be an option.” (Emphasis added)

Conclusions and Disposition

13. While the insolvency issues may have been resolved in Nairobi HC Insolvency Petition No. E155 of 2019, it was not the contemnors’ place to decide when the interim conservatory orders issued by this court will lapse. These orders are in place in this file. The proceedings in Milimani CMCC E3202 of 2020 were instituted after this court had already issued the interim conservatory orders and the 1st contemnor misled that court into issuing execution orders against the applicant herein.
14. Accordingly, the application succeeds. The 1st contemnor is hereby held to be in contempt, in the circumstances. For his contempt, he is hereby fined Kshs.25,000/= for willful disobedience of the orders of this Court issued on 16th December, 2019 and in default to serve 15 days’ imprisonment.
15. The 2nd and 3rd contemnors were strangers to the proceedings acting on the instructions of the 1st contemnor. They are not liable for contempt herein.
16. The order suspending the sale of motor vehicle KBV 223 X is set aside and instead an order for release of the same is granted.
17. Costs in the cause.
18. Orders accordingly.

DELIVERED VIRTUALLY AT KERUGOYA HIGH COURT THIS 20TH DAY OF FEBRUARY, 2025.

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R. MWONGO



JUDGE

Delivered in the presence of:

1. Ms. Wacera holding brief for Ayieka for 20th Respondent
2. Msafiri for 19th Respondent
3. Muroki for 12th Respondent
4. Ngumbao holding brief for Ataka for Applicant
5. Gachau for 8 and 9th Respondent
6. Kariuki for 14th Respondent
7. Francis Munyao - Court Assistant

