



China State Construction Engineering Corporation (Kenya) Limited v Libuyi (Suing as the Director of Thelmax Contractors Limited) & another; Okadenyi (Proposed Interested Party) (Civil Appeal E196 of 2024) [2025] KEHC 8539 (KLR) (19 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8539 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL E196 OF 2024
AC BETT, J
JUNE 19, 2025**

BETWEEN

**CHINA STATE CONSTRUCTION ENGINEERING CORPORATION (KENYA)
LIMITED APPELLANT**

AND

**SAMUEL LIBUYI (SUING AS THE DIRECTOR OF THELMAX
CONTRACTORS LIMITED) 1ST RESPONDENT
MUNEX & COMPANY AUCTIONEERS 2ND RESPONDENT**

AND

BRIAN MMBAYA OKADENYI PROPOSED INTERESTED PARTY

RULING

1. Vide a Notice of Motion dated 23rd December 2024, the Appellant/Applicant sought the following orders:
 1. Spent
 2. This Honourable court be pleased to cite the Respondents for contempt of court order issued on 16th December 2024 and commit them to civil jail for a term of six (6) months and/or penalize them accordingly until they purge their contempt by restoring the Applicant's motor vehicle.
 3. That the Respondents be compelled to comply with the court orders dated 6th December 2024 and unconditionally release the motor vehicle registration number KCT 129Y to the Applicant forthwith.



4. That the costs of the Application be borne by the Respondents.
2. The Application is predicated on the grounds set out in the face of the Notice of Motion and is supported by the sworn affidavit of Geoffrey Muhindi Obamu, an officer of the Appellant/Applicant.
3. In the response, the Respondents filed Replying Affidavits dated 27th January 2025 and 18th February 2025 respectively. Noteworthy, the 1st Respondent also filed a Notice of Preliminary Objection dated 28th January 2025.
4. On 27th February 2025, directions were issued to the effect that the Notice of Preliminary Objection and the contempt application dated 23rd December, 2024, be heard concurrently. In this regard parties, were also directed to file their responses and written submissions.

Background

5. On 6th December 2024, the Appellant filed an application dated even date seeking an order of stay of execution of the orders of the court dated 3rd December 2024 issued in Kakamega Miscellaneous Civil Application No. 150 of 2024.
6. The court considered the application and was minded to grant an order of stay of execution of the said orders. The court also directed that the matter be mentioned on 16th December 2024.
7. When the matter came up for mention on 16.12.2024, the court, upon hearing the respective parties' representations, issued a further order to the effect that the motor vehicle be released on a running attachment pending disposal of the application for stay of execution.
8. On 19.12.2024, the Proposed Interested Party filed an application inter-alia seeking an order staying the orders of the court issued on 16.12.2024 directing release of the subject motor vehicle on a running attachment.
9. It was the Proposed Interested Party's assertion that he had purchased the motor vehicle through public auction held on 14.12.24 and accordingly took its possession. The proposed Interested Party also contended that the orders of 16.12.2024 had been overtaken by events and their implementation would occasion him losses and prejudice.
10. On 29.01.2025, when this matter came for mention for the purpose of taking further directions, Counsel for the 1st Respondent indicated to the court that the Respondent was not aware that as at 16.12.2024, the 2nd Respondent had already disposed of the motor vehicle.
11. Counsel further alluded to what he termed "a mischievous element" displayed by the 2nd Respondent.
12. The 1st Respondent raised a Preliminary Objection which opposed the Appellant's application seeking to cite the Respondents for contempt of court orders issued on 16th December 2024.

Appellants submissions

13. The Appellant relies on Section 5 of the *Judicature Act* and Articles 10 and 159 of *the Constitution*, to urge that courts have the jurisdiction to punish for contempt. The Appellant holds the view that intentional disobedience of a court order constitutes a criminal offence. To establish civil contempt, the Appellant presents three requirements: a court order was given; the respondent was aware of it; and the respondent refused to obey it. They then cite the decision in *Ian Paul Hutchinson t/a Bahnhof Bar and Restaurant Mtwapa v Charles Chishenga Majanja* [2017] KEELC 2173 (KLR) to buttress their argument.



Should the Respondents be Punished for Contempt of Court? Whether the Respondents had knowledge of the court order and its terms?

14. The Appellant argues that the orders were served upon the Respondents, and on the mention date, the 1st Respondent was present when the said orders were made and communicated the orders to the 2nd Respondent. Even though the subject vehicle is said to have been sold by the 2nd Respondent before the 2nd order, the Appellant argues that evidence shows that all proceeds were paid after the order had been made.

Whether the Respondents willfully failed to comply with the terms of the order?

15. The Appellant submitted that the Respondents willfully disobeyed a clearly worded court order to release the vehicle, instead giving a false excuse that it had been sold, in direct contradiction to the court's order. The Appellants referred to the cases of Econet Wireless Kenya Ltd v Minister for Information & Communication [2005]KEHC 1767(KLR), which stressed rigid compliance with court orders, and Gulabchand Popatlal Shah v Yashwant Ranji Shah Civil Application No.39 Of 1990(unreported), which stressed that all orders of the court must be obeyed irrespective of any belief. The Appellant further argued that the decision in Hadkinson v Hadkinson (1952)2 All ER 567 cemented the principle that orders must be obeyed until set aside. Further, Shimmers Plaza Ltd v National Bank of Kenya Ltd and Basil Criticos v Attorney General [2015]KECA 945 (KLR) clarified that one is in contempt for the willful disobedience of an order where one has actual knowledge of the order, whether one has been served formally or not.

Whether the Applicant needed to lift the corporate veil before citing the 1st Respondent?

16. The Appellant submitted that, lifting the corporate veil is unnecessary since the 1st Respondent knowingly submitted to the court's personal jurisdiction by proceeding in his own name in an application where he disclosed his capacity as director. The personal liability of the 1st Respondent for contempt should therefore be merited without lifting the veil inasmuch as it made this direct act and dealt with the court previously.

1st Respondent's submissions

17. The 1st Respondent averred that the Appellant improperly seeks to hold the 1st Respondent's director personally liable without first applying to lift the corporate veil and that the director cannot be cited in his personal capacity absent such an order, as the company remains a distinct legal entity. To buttress this, he relied on the case of Salomon v Salomon & Co (1897)AC 22 which he argued had been affirmed in the cases of Geoffrey Kathuri Kison v East African Portland Cement Co Ltd [2021] eKLR and Katsuri Ltd v Kapurchand Depar Shah [2016] eKLR.

Whether the Appellant has met the Threshold for Civil Contempt

18. On this issue, the 1st Respondent submitted that the Appellant failed to establish the threshold for civil contempt as set out in Samuel M. N. Mweru & Others v National Land Commission & 2 Others [2020] eKLR, which requires the establishment of a clear and binding court order, the Respondent's knowledge of the order, and their willful refusal to comply therewith. The 1st Respondent further relied on the principles laid down in Contempt in Modern New Zealand, which stress the necessity of clarity, knowledge, breach, and intention in the proceedings for contempt. The 1st Respondent contended that it had complied with the court orders, and, in the alternative, it was never aware of, nor did it participate in the auction that was complained of, as per its Replying Affidavit. It further



contended that the Appellant had merely alleged contempt by way of conjecture without producing any evidence of deliberate disobedience; hence the Appellant failed to discharge the onus of proof cast by Section 107 of the *Evidence Act*.

2nd Respondent's submissions

19. The 2nd Respondent relied on the case of North Tetu Farmers Co. Ltd v Joseph Nderitu Wanjohi (2016) eKLR to further the argument that the legal threshold on civil contempt has to be proven beyond the normal civil standard and must involve a deliberate, clear breach of a court order. He argued that he was acting solely under the instructions of the 1st Respondent, Samuel Libuyi (Director of Thelmax Contractors Ltd), who gave instructions for the repossession and auction of the motor vehicle. It is the 2nd Respondent's case that the claims by the 1st Respondent that he was not aware that the auction was taking place are indeed misleading since he failed to communicate to the court order dated 6.12.2024 and received the sale proceeds thereafter. The 2nd Respondent contended that he would not have returned the motor vehicle to the Applicant on demand, as it had already been sold. Further, the 2nd Respondent claimed not to have been served with any documents relating to the said application and that he only became aware of the said proceedings on 27.01.2025. Lastly, he had a go at challenging the sufficiency of the Applicant's service of the court orders dated 06.12.2024 and 18.12.2024, claiming that the alleged attachments on WhatsApp in the affidavits of service were insufficient.

Analysis & Determination

20. In view of the foregoing, the following issues arise for determination by the court: -
- i. Whether the 1st Respondent's Notice of Preliminary Objection is merited.
 - ii. Whether the Respondents are in contempt of the orders of the court issued on 6.12.2024.

Whether the 1st Respondent's Notice of Preliminary Objection dated 28th January, 2025 is merited

21. I have carefully considered the pleadings, evidence and written submissions by the respective parties to this application.
22. The 1st Respondent's Notice of Preliminary Objection is predicated on the assertion that, granted the 1st Respondent is a limited liability company, the Applicant ought to have applied to have the corporate veil lifted before purporting to cite its directors for contempt of court.
23. In support of this contention, the 1st Respondent relied on the decision of Salomon versus Salomon & Co. (supra) where it was inter-alia decreed that the company is at law a different person altogether from its subscribers hence the doctrine of limited liability in company law.
24. The 1st Respondent also relied on the decision in Geoffrey Kathuri Kison & 10 others Versus East African Portland Cement Co. Ltd & 5 Others [2021] where the Court of Appeal cited with approval the findings of the court in Katsuri Limited Versus Kapurchand Depar Shah [2016] eKLR where Hon. Mr. Justice Mativo, as he then was faced with a similar issue held: -

“The alleged Contemnor is a director of the company. He is not a party to these proceedings in his personal capacity. The company is a legal entity. The proper procedure for the Applicant was first to apply to lift the corporate veil then go for the directors in their personal capacities.” emphasis added.



25. I have considered the pleadings herein, especially the citation of the parties. The court notes that the 1st Respondent is cited as, “Samuel Libuyi (Suing/sued as director of Thelmax Contractors Limited”. This citation replicates the citation of Kakamega C.M Miscellaneous Application NO 150 of 2024, which gave rise to the present appeal. The 1st Respondent was the originator of the said application and chose to submit himself to the jurisdiction of the court by filing the suit as a director of the company. As of now, no evidence has been adduced that he is no longer a director. In fact, he continues to make depositions on behalf of the company.
26. The Appellant argued that the issue of the corporate veil cannot arise in the present case, as the 1st Respondent filed an application in his own name disclosing himself as a director and thus voluntarily subjected himself to the court’s jurisdiction in his personal name.
27. Furthermore, the 2nd Respondent argued that it was acting solely under the instructions of the 1st Respondent, Samuel Libuyi (Director of Thelmax Contractors Ltd),
28. On its part, the court cannot reconcile the fact that the 1st Respondent now seeks refuge in the operation of the principle of the corporate veil yet he personally lifted the veil so to speak when he filed the application giving rise to the impugned order issued by the lower court whilst citing himself as suing as director of the said company.
29. It is apparent that the 2nd Respondent only seeks to approbate and reprobate on this issue in a vain attempt to extricate himself from the consequences ensuing therefrom.
30. The court also wonders what utility would be served in insisting on lifting the veil in the circumstances of this case other than to occasion protracted litigation. Such an eventuality would in effect be inimical to the spirit of the provisions of Sections 1A, & 1B of the *Civil Procedure Act*, which obligate parties and the court to adopt strategies to dispose of disputes in a just, expeditious, proportionate and affordable manner.
31. The decisions of the court in Geoffrey Kathuri Kison & 10 others Versus East African Portland Cement Co. Ltd & 5 Others (supra) and Katsuri Limited Versus Kapurchand Devar Shah (supra) are distinguishable in that in the said decisions, the companies were sued in their own names in the first place but then subsequently, applications for contempt against their directors in person were filed. Conversely, in this case, the 1st Respondent personally cited himself as suing on behalf of the company in the first place.
32. Accordingly, the court finds no merit in the Notice of Preliminary Objection dated 28.01. 2025.

Whether the Respondents are in contempt of the orders of the court issued on 16.12.2024

33. In view of the determination above, the court can now proceed to consider whether the Respondents knowingly and willfully disobeyed the orders of the court issued on 6.12. 2024.
34. The Appellant averred that the Orders of the Court issued on 6.12. 2024 were duly served upon the Respondents herein via email, WhatsApp, and in person. In support of this assertion, the Appellant/Applicant attached an Affidavit of Service sworn on 07.12.2024 with attachments evidencing service by way of Whatsapp and email upon the 1st and 2nd Respondents.
35. In response, the 2nd Respondent denied being served with the court order as claimed by the Appellant and asserted that he only came to learn of the existence of the Court Order on 18.12.2024 when he was called by the OCS, Kakamega. He also tried to shift the blame to the 1st Respondent.



36. The 2nd Respondent averred that by the time he got to learn of the court order dated 6.12.2024, he had already disposed of the subject motor vehicle. As such, the 2nd Respondent contends he did not deliberately defy the said court order. On this, the 2nd Respondent who is an officer of the court is not being candid for there is sufficient proof of service. Moreover, the order was succinct, unambiguous and contained a penal notice setting out the consequences of disobedience.
37. Section 5 of the *Judicature Act* confers jurisdiction on this Court to punish for contempt. See Section 5 of the Act as well as the decision of the Court of Appeal in *Shimmers Plaza Limited v National Bank of Kenya Limited* (supra).
38. In *Shimmers Plaza Limited v National Bank of Kenya Limited* (supra), the Court of Appeal held regarding service and notice of an order as follows:-
- “...is subject to whether the person can be said to have had notice of the terms of the judgment or order. The notice of the order is satisfied if the person or his agent can be said to either have been present when the judgment or order was given or made; or was notified of its terms by telephone, email or otherwise. In our view, 'otherwise' would mean any other action that can be proved to have facilitated the person having come into knowledge of the terms of the judgment and/or order. This would definitely include a situation where a person is represented in court by counsel. Once the applicant has proved notice, the respondent bears an evidential burden in relation to willfulness and mala fides disobedience. This Court in the Wambora case affirmed the application of these requirements.”
39. Knowledge of the order and its terms has been held to be sufficient notice to a party and it is no defence that service was not effected personally.
40. In the case of *Basil Criticos Vs Attorney General and 8 Others* [2012] eKLR the court held 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”
41. Back to the case at hand, I note that the Respondents have not disputed personal service of the court order of 6.12.2024, as indicated in the Affidavit of service sworn on 7.12.2024, which indicates service of the said order to have been effected via e-mail and via Whatsapp. The Respondents did not challenge the stated e-mail addresses nor the mobile phone numbers said to be theirs.
42. Noteworthy, the 2nd Respondent's Replying Affidavit only speaks of the order of 16.12.2024, which unfortunately is not the subject of the instant contempt proceedings.
43. The court is alive to the fact that pursuant to the Civil Procedure (Amendment) Rules, 2022, Order 5 Rule 22B, thereof, service of court process via electronic means including, but not limited to, email and WhatsApp; is now legally recognized.
44. I am thus satisfied that both Respondents were duly served with court order dated 6.12. 2024. It cannot therefore be said that the Respondents had no notice of the said court order staying execution of lower court's order dated 3.12.2024.
45. The fact that they nonetheless proceeded to dispose the subject motor vehicle to the proposed interested party vide a purported public auction held on 14.12. 2024 is in itself a clear manifestation of their willful and deliberate disregard and flouting of the court's order, aforesaid.



46. The court needs not overstate the fact that willful disobedience of court orders should be abhorred as it undermines the administration of justice and the rule of law.
47. Although the interested party made submissions, the current proceedings do not affect him, as the court had directed that the preliminary objection and contempt proceedings be heard first. Secondly, none of the other parties submitted on his application dated 19.12.2024. Thus, at this stage, I can only make an order allowing the proposed interested party to be enjoined to these proceedings.
48. For the above stated reasons, I find the Notice of Motion dated 23.12.2024 merited and allow it in the following terms:-
- a. The Notice of Preliminary Objection dated 28.1.2025 lacks merit and is hereby dismissed with costs to the Appellant.
 - b. The court hereby finds Samuel Libuyi and Oliver Wafula Simiyu guilty of contempt of the court Order dated, 6.12.2024 but reserves sentence until the contemnors are heard on mitigation.
 - c. The said Samuel Libuyi and Oliver Wafula Simiyu are hereby ordered to appear personally in court on 17.7.2025 to show cause why they should not be punished for contempt of court and in default warrants of arrest to issue.
 - d. The Appellant/Applicant shall have the costs of the application dated 23.12. 2024.
 - e. The proposed interested party is allowed to be enjoined to this appeal.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 19TH DAY OF JUNE 2025.

A. C. BETT

JUDGE

In the presence of:

Mr. Wanyonyi for the Appellant/Applicant

Mr. Mbaka for the 1st Respondent

No appearance for the 2nd Respondent

Mr. Otsyeno for the proposed Interested Party

Court Assistant: Polycap

