



REPUBLIC OF KENYA



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Kieti v Givens; Diamond Trust Bank & another (Interested Parties) (Civil Suit E016 of 2022) [2025] KEHC 9094 (KLR) (19 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9094 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL SUIT E016 OF 2022
RC RUTTO, J
JUNE 19, 2025**

BETWEEN

FELIX KILONZO KIETI PLAINTIFF

AND

LATANYA NASHA GIVENS DEFENDANT

AND

DIAMOND TRUST BANK INTERESTED PARTY

MACHAKOS SUB COUNTY CRIMINAL INVESTIGATIONS INTERESTED PARTY

RULING

1. Before this court for determination are two applications. The first is a Notice of Motion dated 20th April 2024, filed by the Defendant, seeking the following orders: that the Plaintiff be cited for contempt of court for alleged willful disobedience of the court orders issued on 9th November 2022 and 24th January 2023; that he be committed to civil jail for a period of six months or such other period as the court may deem appropriate; and that he be compelled to immediately hand over possession of Motor Vehicle Nissan X-Trail KCQ 626D to I Can Fly High School.
2. The Defendant's application is premised on the grounds set out on the face of the application and the supporting affidavit sworn by her. The crux of the application is that, on 9th November 2022, the Court ordered the Plaintiff to deposit the logbooks of several motor vehicles in court. This order was issued in the presence of the Plaintiff and his advocate, and was duly served. Further, on 24th January 2023, the Court issued additional orders restraining the Plaintiff from interfering with, selling, or disposing of the said vehicles, and directing him to hand over copies of the logbooks and insurance certificates for the same. Despite the clarity of these orders, the Defendant states that the Plaintiff has failed to deposit the logbooks or provide the insurance certificates as directed. The Defendant's advocates wrote



to the Plaintiff's advocates on several occasions, including letters dated 21st November 2022 and 5th April 2023, demanding compliance. In response, the Plaintiff's advocates stated that the logbook for one vehicle Motor Vehicle Registration Number Isuzu Bus KDE 282R was held by DTB Bank, the 1st interested party herein and only provided copies of the remaining logbooks, while withholding the insurance certificates pending confirmation of full compliance.

3. The Defendant depones that the Plaintiff's failure to comply with the Court orders amounts to contempt, which has persisted for over twelve months. Furthermore, the Plaintiff is said to have acted in continued contempt by interfering with and driving some of the vehicles, removing them from the school premises, and even offering one for sale, actions allegedly undertaken in direct contravention of the injunction orders. The Defendant outlines specific instances where the Plaintiff was seen driving and offering vehicles for sale within Machakos Town between February and June 2023. She asserts that this conduct demonstrates a blatant disregard for the authority and dignity of the Court, and has obstructed the scheduled annual motor vehicle inspection. She further avers that the Plaintiff's non-compliance has adversely affected the school's operations, the welfare of the children, and herself. The Defendant expresses concern that unless the Court intervenes to enforce compliance, the Plaintiff will persist in disobeying its orders, thereby eroding public confidence in the rule of law. She therefore prays that the Court cites the Plaintiff for contempt and grants the reliefs sought in her Notice of Motion, together with costs.
4. In opposition to the said application, the Plaintiff filed a Replying Affidavit sworn on 27th May 2024. He contends that he has complied with the court order dated 9th November 2022, stating that his former advocates forwarded all the logbooks to the Deputy Registrar and subsequently filed an affidavit annexing copies of the insurance certificates. He further avers that Motor Vehicle Registration Number Isuzu Bus KDE 282R was attached pursuant to an outstanding loan with the 1st Interested Party. According to the Plaintiff, it would not have been possible for him to sell the motor vehicles, as both the logbooks were already deposited with the Deputy Registrar of the High Court at Machakos. He depones that he has kept away from the school premises, particularly in respect of L.R. No. Muputi/Kiputwa 1803, L.R. No. Muputi/Kiputwa 1065, and L.R. No. Kanyakago/Kamgundho/395 as such he is a stranger to the applicant's allegations. Regarding previous applications that had been compromised, the Plaintiff asserts that his application dated 4th November 2022 was also compromised, but that his former advocates failed to file responses, which necessitated a change of legal representation. He urged the court to dismiss the application for it was made in bad faith and is misconceived.
5. The second application, dated 2nd May 2024 was filed by the Plaintiff. In it, he seeks several orders: first, an order directed at the 2nd Interested Party for the release of Motor Vehicle Registration Number KCV 011M Toyota Prado to him, together with his identification documents that were inside the vehicle at the time it was impounded by the police; second, an injunction restraining the Defendant and her agents from interfering with his possession and control of Motor Vehicles Registration Numbers KCV 011M Toyota Prado and KCQ 626D Nissan X-Trail, pending the determination of both the application and the main suit; and third, an order for review and setting aside of the proceedings and orders issued on 20th July 2023, which compromised the pending applications and directed that the main suit proceed to full hearing. In place of that order, the Plaintiff seeks directions for parties to file submissions on his earlier application dated 4th November 2022.
6. The application is based on the grounds set out on its face and the supporting affidavit sworn by the Plaintiff. He avers that he had filed the main suit together with the application dated 4th November 2022, in which he sought a temporary injunction restraining the Defendant and her agents from interfering with his control over the suit motor vehicles. Pursuant to that application, an order was



issued requiring him to deposit the original logbooks with the Deputy Registrar of the Machakos High Court, which, according to him, he complied with by depositing the original logbooks for Motor Vehicles KCV 011M and KCQ 626D. The Plaintiff depones that, despite the said compliance, the Defendant has continued to interfere with his control and management of Motor Vehicle KCV 011M. He states that on 25th July 2023, police officers attached to the 2nd Interested Party towed the vehicle to an undisclosed location, allegedly without a court order. He further states that on 5th October 2023, the Sub-County Directorate of Criminal Investigations appeared before court and claimed that the motor vehicles were to be handed over to I Can Fly High School, despite there being no court order to that effect. The Plaintiff expresses doubt as to the truthfulness of this claim, stating that he has observed the vehicle being driven around and that the officers have continued to harass him, even threatening to come for KCQ 626D.

7. He contends that the only vehicles which were ever to be released to I Can Fly High School were KDE 281R (Bus) and KBN 643, and not any other. He argues that unless the Court issues an order compelling the production and release of KCV 011M together with his identification documents, he will suffer irreparable harm, as he relies on the said vehicle for his daily transportation. He therefore urges the Court to restrain both the Defendant and the 2nd Interested Party from interfering with his enjoyment, possession, and use of Motor Vehicles KCV 011M Toyota Prado and KCQ 626D Nissan X-Trail pending the determination of the suit.
8. In opposition to the Plaintiff's application dated 2nd May 2024, the Defendant relied on the Replying Affidavit sworn on 15th December 2023. In her response, the Defendant contends that she facilitated the acquisition of several motor vehicles that is, KCV 011M Toyota Prado, KCQ 626D Nissan X-Trail, KBN 643A Toyota Pick-Up Truck, KBA 850G Toyota Coaster School Bus, and KDE 282R Isuzu Bus, which she states were intended for use in connection with the school. She asserts that she is the founder of the school and that the Plaintiff was previously employed there, but that his services were subsequently terminated. The Defendant further avers that at the time of the Plaintiff's termination; he remained in possession of Motor Vehicles KCV 011M and KCQ 626D and allegedly refused to return them. She states that she thereafter filed an application seeking orders to restrain the Plaintiff from interfering with, driving, or in any way dealing with the subject vehicles. The court, in response, issued interim orders on 24th January 2023. According to the Defendant, despite these orders, the Plaintiff continued to use the vehicles and also claimed to be the proprietor of land associated with the school.
9. The Defendant depones that the Plaintiff's conduct gave rise to a criminal complaint lodged against him by Reverend Mutuku Malinda (the former manager of the school) and Mary Kikuni (who she refers to as the original owner of the school), alleging that the Plaintiff had made a false document. She states that criminal proceedings are ongoing and that the Plaintiff is currently out on a cash bail of Kshs. 200,000. She further alleges that it is in the course of these investigations that the police exercised their statutory powers and detained Motor Vehicle KCV 011M Toyota Prado, although the key remains in the Plaintiff's possession.
10. The Defendant further asserts that the school is currently in possession of the following motor vehicles: Toyota Pick-Up Truck KBN 643A, Toyota Coaster School Bus KBA 850G, Isuzu Bus KDE 282R, and KCV 011M Toyota Prado. She states that although the latter is within the school compound, it is not being driven by anyone. The Defendant contends that the Plaintiff contravened the orders issued on 24th January 2023 which expressly prohibited him from driving or otherwise dealing with KCV 011M, when he allegedly drove the said vehicle prior to its detention on 25th July 2023. She further alleges that the Plaintiff remains in violation of the said order by continuing to drive Motor Vehicle KCQ 626D Nissan X-Trail. According to the Defendant, no prejudice would be occasioned if Motor



Vehicle KCV 011M remains in the school's possession, as the Plaintiff had previously indicated that the vehicle was intended for use in relation to the school.

11. Pursuant to directions issued by this Court, the two applications were canvassed by way of written submissions. The Plaintiff's submissions in respect of both applications are dated 19th July 2024, while the Defendant's submissions relating to the applications dated 20th April 2024 and 2nd May 2024 are both dated 3rd February 2025.
12. I also note that on 4th April 2025, the Interested Parties expressly indicated that they would not be participating in the determination of the two applications currently before the Court.

Plaintiff's Submissions

13. With respect to the application dated 20th April 2024, which was filed first in time by the Defendant, the Plaintiff began his submissions by outlining a brief summary of the facts and identifying the applicable legal framework governing contempt of court proceedings. He placed reliance on the Court of Appeal's decision in *Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 Others* [2014] eKLR, which outlines the requisite elements for establishing civil contempt. The Plaintiff maintained that he had not committed any act of contempt and submitted that the Defendant's application is without merit, characterizing it as mendacious, vexatious, and an abuse of the court process. He therefore urged the Court to dismiss the application dated 20th April 2024 in its entirety.
14. Regarding his own application dated 2nd May 2024, the Plaintiff opened his submissions by reiterating the facts supporting the application, as set out in the grounds and supporting affidavit. He relied on Section 8 of the *Traffic Act* and the decision in *Lucy Wambura Ngaku & Another v Charles Mutua & Another* [2021] eKLR, submitting that he is the registered owner of Motor Vehicles KCV 011M Toyota Prado and KCQ 626Q Nissan X-Trail. He argued that he stands to suffer irreparable harm if the reliefs sought are not granted, given that he currently lacks access to the said motor vehicles and to his personal documents contained therein.
15. In further support, the Plaintiff cited *Joseph Siro Mosioma v Housing Finance Company of Kenya Limited & 3 Others* [2008] eKLR, submitting that monetary compensation would be inadequate to remedy the injury he continues to suffer. He also cited *Chebii Kipkoech v Barnabas Tuitoek Bargonia & Another* [2019] eKLR to assert that the threshold for granting an injunction had been met, particularly on the basis of the balance of convenience. Additionally, he relied on *Esso Kenya Limited v Mark Makwata Okiya*, Civil Appeal No. 69 of 1991, to underscore the principles governing the issuance of injunctive relief. He concluded his submissions by urging the Court to allow the application dated 2nd May 2024.

Defendant's Submissions

16. With regard to the application dated 20th April 2024, the Defendant commenced her submissions by outlining a brief background of the matter, as elaborated in her application. She then addressed the key issue for determination that is, whether the Plaintiff is in contempt of the court orders issued on 9th November 2022 and 24th January 2023, and whether he should consequently be committed to civil jail for his alleged contemptuous conduct.
17. In addressing the legal framework governing contempt of court, the Defendant relied on several authorities, including *Samuel M. N. Mweru & Others v National Land Commission & 2 Others* [2020] eKLR; *Republic v Attorney General & 2 Others ex parte Mountain Slopes Commercial Services Limited & Another* [2016] eKLR; and *Katsuri Limited v Kapurchand Depar Shah* [2016] eKLR. She also cited Section 5(1) of the *Judicature Act* in support of the applicable law. The



- Defendant submitted that, in the absence of a specific statute governing contempt in Kenya, the relevant substantive and procedural law remains the English Civil Procedure (Amendment No. 2) Rules, 2012, the English *Contempt of Court Act*, 1981, and the applicable principles of common law.
18. Relying further on the Mweru case, the Defendant highlighted the legal tests to be satisfied in a contempt application. She submitted that the applicant must prove the following elements: the existence of a clear and unambiguous court order; knowledge of that order by the Respondent; non-compliance with the order; and that the Respondent's failure to comply was deliberate and wilful.
 19. The Defendant further submitted that the Plaintiff deliberately drove Motor Vehicles KCV 011M Toyota Prado and KCQ 626Q Nissan X-Trail, and even affixed a "For Sale" sign on the latter, thereby clearly indicating an intention to dispose of the vehicle. She contended that these actions were in express violation of the court orders issued on 24th January 2023, of which the Plaintiff was fully aware. In support of her submissions, the Defendant relied on the decisions in *Sheila Cassat Issenberg & Another v Antony Machatha Kinyanjui* [2021] eKLR and *Haron Mugo Kabuchi & 6 Others v Ndimu Farmers Cooperative Society & 8 Others* [2006] eKLR, submitting that the court orders in question were neither vague nor ambiguous, and that there has been continued wilful disobedience by the Plaintiff.
 20. On the question of the appropriate sanction to be imposed upon the Plaintiff, the Defendant relied on Order 40 Rule 3 of the Civil Procedure Rules and submitted that, in the circumstances of this case, the Plaintiff ought to be committed to civil jail for his actions. In support of this position, the Defendant cited several authorities, including *Republic v Principal Secretary, Ministry of Defence ex parte George Kariuki Waithaka* [2018] eKLR; *Teachers Service Commission v Kenya National Union of Teachers & 2 Others, Petition No. 23 of 2013*; *Econet Wireless Kenya Limited v Minister for Information & Communication of Kenya & Another* [2005] KLR 828; and *Kenya Human Rights Commission v Attorney General & Another* [2018] eKLR.
 21. With regard to the Plaintiff's application dated 2nd May 2024, the Defendant submitted on two key issues: first, whether Motor Vehicle Registration Number KCV 011M ought to be released to the Plaintiff; and second, whether the matter should proceed to full hearing. On the first issue, the Defendant submitted that Motor Vehicle Registration Number KCV 011M Toyota Prado was purchased through contributions made by members of a church she attended in the United States, and that the vehicle was intended to serve the interests of the school. She further stated that the Plaintiff, then an employee of the school, was entrusted with the vehicle and had it registered in his name in his capacity as a trustee. However, following the termination of his employment due to various issues, the Court issued an order on 24th January 2023 barring him from driving, interfering with, removing from the school, or disposing of the said motor vehicle.
 22. In light of the foregoing, the Defendant argued that it was expected that Motor Vehicle KCV 011M would remain within the school premises and would not be driven by, or interfered with, by the Plaintiff. The Defendant therefore submitted that the application filed by the Plaintiff lacks procedural merit and ought to be dismissed. She further contended that since the orders issued on 24th January 2023 have neither been reviewed nor appealed against, allowing the Plaintiff's application would amount to circumventing valid and subsisting court orders.
 23. The Defendant further submitted that the Plaintiff's alleged conversion of property associated with the school necessitated the lodging of a criminal complaint against him. She argued that once such a report is made, the nature and scope of investigations as well as the actions taken are matters within the purview of the police and beyond her control. The Defendant therefore maintained that it would be prudent for the Court to preserve the status quo, as disturbing it would effectively defeat the orders



issued on 24th January 2023. In support of this position, the Defendant relied on the case of Wildlife Lodges Limited v County Council of Narok & Another [2005] 2 EA 344 (HCK), submitting that enforcement of court orders would be rendered futile if the Plaintiff's application were allowed.

24. On whether the matter should proceed to full hearing, the Defendant submitted that the applications which the Plaintiff seeks to have re-heard relate to control and possession of various motor vehicles and parcels of land. She argued that these are the very issues that the main suit whose progression both parties previously consented to will determine conclusively. The Defendant emphasized that the decision to proceed to the main suit was reached by consent, and that such a consent order can only be set aside under exceptional circumstances, such as fraud, mistake, or misrepresentation none of which have been alleged or demonstrated in this case.
25. The Defendant concluded her submissions by stating that the Plaintiff has failed to provide any justification that would warrant the grant of the prayers sought in his application.

Analysis and Determination

26. I have carefully considered both applications herein, the affidavits by parties and submissions filed as well as the authorities relied upon and the two issues arising for determination are;
 - a. Whether the Plaintiff is in contempt of the court orders issued on 9th November 2022 and 24th January 2023.
 - b. Whether the Motor Vehicle KCV 011M Toyota Prado should be released to the Plaintiff and an injunction issued restraining the Defendant and the 2nd Interested Party from interfering with Motor Vehicle KCV 011M Toyota Prado and KCQ 626Q

Whether the Plaintiff is in contempt of the court orders issued on 9th November 2022 and 24th January 2023.

27. The Black's Law Dictionary (Ninth Edition) defines contempt of Court as:-

“Conduct that defies the authority or dignity of a Court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
28. The law guiding the present Application is Order 40 Rule 3(1) of the Civil Procedure Rules which stipulates as follows: -

“In cases of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the Court directs his release.”
29. Section 5(1) of the *Judicature Act* which provided that:

“The High Court and the Court of Appeal shall have the same power to punish for contempt of Court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate Courts.”
30. It is an established principle of law as was held in the case of Kristen Carla Burchell vs Barry Grant Burchell, Eastern Cape Division Case No. 364 of 2005 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.

31. From the sworn affidavit, annexures, submissions by counsel, the applicable law and the decided cases, the following issues stand out for determination in this first issue: -
- i. Whether the Plaintiff was served with or was made aware of the orders of 9th November 2022 and 24th January 2023.
 - ii. Whether the Plaintiff is guilty of contempt of Court orders issued on 9th November 2022 and 24th January 2023.
 - iii. Whether an injunction against the Defendant and the 2nd interested party should issue.
32. It is undisputed that the court issued valid orders on 9th November 2022 and 24th January 2023. As to whether the Plaintiff was served with or was made aware of the orders of 9th November 2022 and 24th January 2023, it is undisputed that the Plaintiff had knowledge of the orders, having been present through counsel during their issuance and further notified through correspondence by the Defendant's counsel. The Plaintiff does not dispute that he was in possession and use of certain motor vehicles which, by the express terms of the court orders, he was restrained from interfering with, driving, or dealing in any manner.
33. Despite partial compliance, such as depositing logbooks as was admitted, the Plaintiff continued to use the subject motor vehicles. This conduct, in light of the orders restraining any such dealings, amounts to willful and continued disobedience. It has been held by the Courts that unless and until a Court order is discharged, it ought to be obeyed. Indeed, the Court of Appeal in *Central Bank of Kenya & Another vs. Ratilal Automobiles Limited & Others*, Civil Application No. Nairobi 247 of 2006 held that it was a fundamental tenet of the rule of law that Court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a Court of law.
34. I therefore find that the Plaintiff herein willfully and intentionally defied the court orders issued on 9th November 2022 and 24th January 2023 despite knowledge of the same. His action of continued use of Motor Vehicles Registration Number KCQ 626Q defy express court orders that have not been set aside. The orders were clear and unambiguous, and the conduct of the Plaintiff reflects deliberate non-compliance. I thus find that the Defendant herein is in blatant contempt of Court orders and will proceed to punish him for contempt.

Whether the Motor Vehicle KCV 011M Toyota Prado should be released to the Plaintiff and an injunction issued restraining the Defendant and the 2nd Interested Party from interfering with Motor Vehicle Registration No. KCV 011M and KCQ 626Q

35. The Plaintiff seeks release of the vehicle, claiming its impoundment was unlawful. The vehicle was removed by police officers during the pendency of a dispute over its control and use, and in the context of subsisting court orders prohibiting interference with or use of the said vehicle.
36. There is currently no order of the Court directing the Plaintiff's possession or use of the vehicle. On the contrary, the interim orders in place bar him from use or interference. The lawfulness of the police action is not for determination in this forum unless shown to be without basis or in breach of existing rights, none of which has been demonstrated. The matter of poed therein.
37. There is no legal basis therefore to order the release of Motor Vehicle KCV 011M to the Plaintiff at this interlocutory stage when there exist valid orders. This request is therefore dismissed, and the status



quo shall be maintained until final resolution of the main suit, the parties having consented to have the main dispute resolved.

38. I also noted that the Plaintiff sought interim orders to restrain interference by the Defendant and the 2nd Interested Party. Injunctions are equitable remedies. The threshold established in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358 requires the Plaintiff to show a prima facie case with a probability of success, that irreparable harm would result if not granted, and that the balance of convenience tilts in his favour. Given that there are existing valid court orders restraining the Plaintiff from interfering with the subject Motor vehicles, the Plaintiff cannot turn around and seek protection against enforcement of the same orders. This would effectively contradict or reverse those subsisting orders without any application for review or appeal which this court cannot do. The Plaintiff's prayer for injunctive relief is therefore without merit and is hereby dismissed.

39. Based on the above, I hereby direct that;

- a. The Plaintiff is hereby found to be in contempt of the court orders issue on 9th November 2022 and 24th January 2023.
- b. The Plaintiff is committed to civil jail for a period of 30 days, suspended for 14 days to allow him to purge the contempt by fully complying with the orders and depositing any outstanding document as directed in the earlier orders.
- c. The Plaintiff's application dated 2nd May 2024 is dismissed.
- d. Each party to bear their own costs.

Orders accordingly.

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

RHODA RUTTO

JUDGE

In the presence of;

.....Plaintiff

.....Defendant

Sam, Court Assistant

