



Karoki v Manager Kenya Commercial Bank Nyeri & another (Civil Appeal 45 of 1999) [2025] KEHC 10724 (KLR) (18 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10724 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL 45 OF 1999
MA ODERO, J
JULY 18, 2025**

BETWEEN

KANYI KAROKI APPLICANT

AND

MANAGER KENYA COMMERCIAL BANK NYERI 1ST RESPONDENT

KENYA COMMERCIAL BANK 2ND RESPONDENT

RULING

1. Before this court is the Notice of Motion dated 24th March 2024 by which the Applicant Kanyi Karoki seeks the following orders:-
 - “ 1. That the 1st and 2nd Respondent be cited and held in contempt of court order and be punished accordingly.
 2. That there be an order requiring the 1st and 2nd Respondents to release to the Applicant Kshs. 590,241.90
 3. That costs of this application be provided for.”
2. The application was premised upon Section 1A, 1B, 3A of the Civil Procedure Act, Section 159 of the *Constitution* of Kenya 2010 and all other enabling provisions of the law and was supported by the affidavit of even date sworn by the Applicant.
3. The 1st Respondents being Manager Kenya Commercial Bank Nyeri and the 2nd Respondent Kenya Commercial Bank opposed the application through the Replying Affidavit dated 17th July 2024.
4. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 15th March 2025 whilst the Respondents relied upon their written submissions dated 5th April 2025.



Background

5. When this appeal was admitted in year 1999 the court directed that the decretal sum of Kshs. 152,121.50 be deposited into a joint interest earning account opened in the name of both Advocates. This order was complied with and an account No. 112XXX864 was opened at the Kenya Commercial Bank, Nyeri Branch.
6. The Appeal was eventually dismissed. The Applicants Advocate Mr. Gacheche Wa Miano who had been ailing passed away on 12th June 2018 before the appeal was concluded. Vide an application dated 9th September 2022 the Applicant sought the following orders:-
 - “ 1. Spent.
 2. That this Honourable court be pleased to order the manager Kenya Commercial Bank, Nyeri Branch to release all funds held in the Account Number 112XXX564 to Mr. Kanyi Karoki, the Applicant.
 3. That costs be in the cause.”
7. The application was duly heard and on 19th July 2023 Hon. Justice Muya allowed the same.
8. The Applicant extracted the order which he served on the Respondent. Upon receiving the order the 1st Respondent noted an anomaly in the order. The Applicant then applied to have the order rectified which rectification was allowed on 30th August 2023 and a rectified order was issued on 6th September 2023.
9. The Applicant avers that the rectified order was duly served on the Respondents on 8th September 2023 but the Respondents failed and/or declined to comply with the orders and failed to release the decretal sum of Kshs. 152,121.50 plus interest accruing at 12% from the year 2000 totaling Kshs. 590,241.50.
10. The Applicant then filed this present application seeking to have the Respondents cited and punished for contempt.
11. The Respondents in their reply deny having been served with the application dated 9th September 2022. The Respondents also deny having been served with the court orders dated 6th September 2023.
12. Notwithstanding the lack of service the Respondents state that they were not parties to this appeal in which the order was made to deposit the decretal sum in a joint account.
13. The Respondents nevertheless concede that a joint account was indeed opened at KCB by the two advocates on record being Account No. 112XXX864. That the said account could only be operated by the proprietors of the two law firms. That the bank account has been closed and the records in respect of said account have since been destroyed.
14. The Respondents further state that a perusal of the statements for account No. 112XXX864 reveals that the funds held in that account being Kshs. 163,879.60 were on 10th August 2013 transferred to an Account No. 113XXXX194 held in the name of the Law firm AJ Kariuki & Company Advocates.
15. The Respondents finally state that the named account does not exist and that they are not holding any funds. They deny having willfully disobeyed court orders and urge the court to dismiss the application.



Analysis and Determination

16. I have carefully considered this application the reply filed thereto as well as the written submissions filed by both parties. The only issue for determination is whether the Respondents are guilty of contempt of court orders:-
17. The jurisdiction of this Court to punish for contempt is found in Section 5 of the *Judicature Act* which provides as follows:-
- “(1) 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 such power shall extend to upholding the authority and dignity of subordinate courts.
- (2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.”
18. Thus, in *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another* [2005] KLR 828, the obligation to obey court orders was well explicated thus:-
- “It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.” [own emphasis]
19. In the premises, the elements that the Applicants herein needed to prove are:-
- that the Order of 19th July 2023 was clear, unambiguous and binding on the respondents;
 - that the respondents had proper notice of knowledge of the terms of that Order;
 - that the Respondents have deliberately failed to obey the terms of the order;
- (see *Katsuri Limtied v Kapurchand Depar Shah* [2016] eKLR)
20. The standard of proof applicable in contempt applications, is above a balance of probabilities, given the criminal connotations of contempt proceedings. In *Gatharia K. Mutikika v Baharini Farm Ltd* [1985] KLR 227 the Court of Appeal stated as follows:-
- “.....In our view the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt..... The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to offence which can be said to be quasi-criminal in nature.”
21. It is important that the court satisfy itself that the person being accused of disobeying court orders had knowledge/notice of said court orders.



In *Oilfield Movers Ltd -vs- Zahara Oil & Gas Limited* [2020] eKLR the court stated as follows:-

“It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or motive of the existence of the order of the court forbidding it. The threshold is quite high as it involves possible deprivation of a persons’ liberty.....”

22. On the question of clarity of the orders a look at the record shows that on 19th July 2023 the Honourable Judge made the following orders:-

“The application dated 12th September 2022 being not opposed is allowed as prayed.”

23. On 27th July 2023 the court corrected its order to indicate that the order under reference referred to the application dated 9th September 2022.

24. Again a look at the record clearly shows that the prayers sought in the application dated 9th September 2022 were to compel the Respondents to release to the Applicant all the funds held in the account Number 112XXX564. This is the prayer that the court allowed. I am therefore satisfied that the orders made by the court were clear and unambiguous.

25. The next question is whether the said were served upon the Respondents. The initial application dated 9th September 2022 which led to the orders in question was heard ex parte in the absence of the Respondents.

26. A perusal of the court record reveals that the Respondent were Not served with any hearing notice for that application. They were only served with a mention notice for 19th April 2023 vide the Affidavit of service dated 18th April 2023. I have perused the Affidavits of Service in respect of the ‘Hearing Notices’ allegedly served on the Respondents being the Affidavit of service dated 24th February 2023 and 17th July 2023, both sworn by one Daniel Nganga Wanyoike. At paragraph (4) of both Affidavit it is averred as follows;-

“That at the time of service the email contact was not known to me having served them severally.”

27. If the process-server did not know which email address to use for service then he cannot be said to have properly served the hearing notices. There was no acknowledgement of service from the recipients in both cases. I find that service was defective. Thus it is clear that the Respondents were disadvantaged as they were not made aware of the hearing date for the application dated 9th September 2022. Whether this omissions was deliberate or not this court cannot tell.

28. In their Replying Affidavit the Respondents deny having been served with the rectified orders made on 6th September 2023. The Applicant has annexed to his supporting affidavit an affidavit of service dated 14th September 2023, in which one Daniel Nganga Wanyoike a court process server depones that he received the court order dated 6th September 2023 from the applicant for service upon the respondents. That he then went to the KCB Bank Nyeri Branch who declined to receive the order directing that the same ought to be served at Kencom House in Nairobi.

29. The process-server proceeds to aver that on 8th September 2023 he traveled to Nairobi and went to Kencom House where he served the order on the legal officer. However the process-server did not annex to his Affidavit of service a copy of the order signed by the legal officer whom he served or in the alternative stamped by the bank.



- 30. I do take judicial notice of the fact that KCB, is a leading financial institution in this country and no doubt is served with numerous legal documents regularly. Most banks will acknowledge receipt of any legal document by either the recipient signing the reverse of the order or by affixing the Banks official stamp with time and date the order was received.
- 31. If the recipient declined to sign and/or acknowledge service then the process-server ought to have indicated this fact in his affidavit.
- 32. There is no acknowledgement of service in this case. In the circumstances I cannot dismiss the Respondents averments that they were never served with the order in question.
- 33. A party cannot be held liable for disobeying an order which they were never served with. This application fails on account of failure to prove that service of the order was effected. In the circumstances there is no need for the court to consider the other elements for contempt.
- 34. Finally I find no merit in this application. The same is dismissed in its entirety. Costs will be met by the Applicant.

DATED IN NYERI THIS 18TH DAY OF JULY 2025.

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MAUREEN A. ODERO
JUDGE

