



**Zen Motors Limited v Kiongera & another (Civil Appeal 111 of 2023)
[2025] KEHC 13033 (KLR) (23 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13033 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL 111 OF 2023
TW OUYA, J
SEPTEMBER 23, 2025**

BETWEEN

ZEN MOTORS LIMITED APPELLANT

AND

DAVID NGIGI KIONGERA 1ST RESPONDENT

FREDRICK GEORGE MURIITHI NJERU 2ND RESPONDENT

(Being an appeal from the ruling of Hon. Diana Milimu, SRM, at Thika Chief Magistrate's court in Civil case no. 634 of 2020, delivered on 3rd October, 2022)

JUDGMENT

1. This appeal emanates from the ruling and order of the lower court, in which the application by the 1st respondent dated the 26th of May, 2022, seeking to have the appellant's director, Mr. Yousif Shakoor, cited for contempt of court was allowed.
2. A brief background to the present appeal is that the appellant, Zen Motors Limited, had filed an application dated the 21st of January, 2021, before the trial court, seeking the unconditional release of Motor Vehicle registration no. KCU 806L (the subject Vehicle) from Juja Police station. By a ruling delivered on the 19th of July, 2021, the learned trial magistrate held that the suit cannot be resolved summarily at an interlocutory stage given the permanent nature of the orders sought by the appellant and proceeded to dismiss the application. It is alleged that despite knowledge of the orders of the court, the appellant instructed Itiopia Auctioneers to dispose of the subject vehicle. The said auctioneers then filed Winam Misc Civil Cause No. E49 of 2022 on the 14th of April, 2022, and they were issued with ex-parte orders for the release of the subject vehicle from Juja Police station.
3. The 1st respondent then filed an application dated the 26th of May, 2022, seeking that the Mr. Yousif Shakoor, the appellant's director, be found guilty for contempt of court; and that the said director



should be fined Kshs two hundred Thousand (200,000) as well as committed to civil jail for a period of thirty days (30) for disobeying and defying the orders of the trial court. The application was allowed following the ruling delivered by the trial court on 3rd October, 2022.

4. Aggrieved by the said ruling and order, the appellant proffered an appeal to this court, through a Memorandum of Appeal dated 5th October, 2022. In the Memorandum of Appeal, the appellant advanced a total of five (5) grounds of appeal, wherein they faulted the learned trial magistrate for finding its director in contempt of court whereas the said director was not a party to the suit and despite there being no order served on him as required by law; for allowing an application to curtail the freedoms of an individual without satisfying itself that strict procedures had been followed; and for her interpretation of the law on Contempt of Court and the principles guiding the procedure thereto.
5. The appellant also faulted the learned trial magistrate for holding a person, who was not a party to the suit, in contempt of court, without first issuing a Notice to show cause to the said person, in total contravention of the principal of Natural justice on the right to be heard; and for relying on a law that was repealed in 2018.
6. On the above grounds, the appellant urged this court to set aside the ruling by the trial court, and dismiss the application dated 26th May, 2022, the appellant also urged this court to award him the costs of the appeal.
7. The appeal was canvassed by way of written submissions. The appellant's submission dated 12th August, 2024, was filed on its behalf by its learned counsel Gachie Mwanza & Co. Advocates; while those by the 1st respondent dated 30th August, 2024, was filed on his behalf by his learned counsel Mutwiri & Mwongera Co. Advocates. The 2nd respondent did not file his written submissions.
8. In its written submissions, the appellant contended that Mr. Yousif Shakoor, was not a party to the suit before the trial court, and he therefore had no knowledge of any orders affecting him. It was the appellant's contention that personal service of the orders was never effected upon Mr. Shakoor, and he therefore had no personal knowledge of the said orders; as such he cannot be held in contempt of orders that he had no knowledge of.
9. The appellant submitted that there was no evidence adduced before the trial court to show that the appellant interfered with the subject vehicle; and it was therefore unfortunate for the trial court to condemn Mr. Shakoor, who is not a party to the suit to civil jail over unfounded allegations.
10. It was the appellant's submission that the trial court did not issue out any positive order on the appellant or any of its directors commanding compliance other than the dismissal of its application; that the alleged contemnor had no proper knowledge of any order as he was never served with the same as is required by law, and further that there was no disobedience on the part of the appellant's director on any court orders as no actions were ever undertaken as alleged.
11. The appellant submitted that the 1st respondent ought to have provided conformation from the OCS Juja Police station that the subject vehicle was no longer in the custody of the police station, which he did not, as such, the said vehicle could still be at the said police station. The appellant further submitted that the trial court ought to have issued a Notice to show cause to the director of the appellant and accord him his right to be heard and challenge the evidence adduced against him; as such, there was a miscarriage of justice and the order committing Mr. Shakoor to civil jail ought to be quashed in its entirety.
12. It was the appellant's submission that the law applicable in an application for contempt of court after the high court declared the *Contempt of Court Act* unconstitutional more specifically, section 5 of the



Judicature Act, as such, the application by the 1st respondent did not meet the requisite standards as required by law and ought to have failed in the first instance, as it was not properly grounded.

13. The applicant contended that the law that is currently applicable in an application for contempt of court, after the high court declared the Contempt of Court Act unconstitutional, is the Judicature Act, more specifically Section 5 of the said Act; as such, the application by the 1st respondent ought to have failed in the first instance as it was not properly grounded in law.
14. The 1st respondent, David Ngigi Kiongera, on the other hand submitted that Mr. Yousif Shakoor, who is a director of the appellant is the mind and will of the company, and despite having knowledge of the ruling that barred them from being handed the subject vehicle, proceeded to issue instructions to the auctioneer to obtain ex parte orders.
15. He further submitted that Mr. Shakoor's actions of disobeying the orders of the trial court were wilful and deliberate, as such, the appellant cannot feign ignorance of the trial court's orders whereas it mischievously issued instructions to auctioneers to obtain orders for the release of the subject vehicle from Winam Law courts which is outside the jurisdiction of the court without any plausible explanation.
16. The 1st respondent contended that Mr. Shakoor was granted a fair hearing but failed to convince the court as to why he acted in contempt. As to whether the court applied the appropriate law in holding the appellant liable for contempt, the 1st respondent submitted that section 5 of the judicature Act, as well as Section 10 of the Magistrate's Court Act gives the trial court the power to punish for contempt of court so as to uphold the authority and dignity of the courts.
17. It was the 1st respondent's contention that all the ingredients required to be proved in order to make a case for contempt of court were proved against Yousif Shakoor the contemnor, as such he ought to be held personally liable for the contempt unless he purges the contempt.
18. This being a first appeal, this court has a duty to re- consider and re-evaluate the entire evidence before the trial court afresh, and to come to its own independent conclusion on whether or not the findings of the trial court should stand; while bearing in mind that unlike the trial court, this court did not have the advantage of seeing or hearing the witnesses, and to make due allowance in that respect.
19. This principle was reiterated in the court of appeal case of *Selle –vs- Associated Motor Boat Co.* [1968] EA 123; as follows: "The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect, in particular the court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally."
20. Guided by the principle in the afore stated authority, I have carefully considered the grounds of appeal, the rival written submissions by the parties and the authorities cited therein; having done so, I find that the main issues for determination in this appeal are as follows:
 - i. Whether the application dated 26th May, 2022, was invalid for being founded on a statute that has been declared unconstitutional; and



- ii. Whether the director of a company can be held liable for contempt of court for the actions committed by the company whereas the said director was not a party to the suit.
21. Turning now to the first issue for determination, the appellant had in its Written submissions dated 12th August, 2024, indicated that the application by the 1st respondent dated 26th May, 2022, ought to have failed in the first instance, as the same was founded on a law that had been declared invalid. The 1st respondent on the other hand was of the view that Section 5 of the Judicature Act, as well as section 10 of the Magistrate’s Act, gives the trial court the power to punish for contempt of court.
22. That being said, I have noted from the records of the trial court, that the application by the 1st respondent dated 26th May, 2022, was brought under sections 4 (1), 6 and 29 of the Contempt of Court Act, no. 46 of 2016, as well as under section 10 (3) of the Magistrate’s Court Act.
23. The problem however, is that the high court in Kenya Human Rights Commission versus Attorney General & another [2018] KEHC 9656 (KLR); had by its judgement dated 9th November, 2018, declared the Contempt of Court Act no. 46 of 2016 unconstitutional. The court in the said decision held as follows: “Having considered the petition, the response, submissions, the constitution and the law, I am persuaded that sections, 30 and 35 of the Contempt of court Act are unconstitutional. I, however, find that the entire fails the constitutional test of validity for lack of public participation and for encroaching on the independence of the judiciary. Consequently, and for the above reasons, this petition succeeds and I make the following orders. A declaration is hereby issued that Sections 30, and 35 of the impugned contempt of court Act No 46 of 2010 are inconsistent with the constitution and are therefore null void. A declaration is hereby issued that the entire contempt of court Act No 46 of 2016 is invalid for lack of public participation as required by Articles 10 and 118(b) of the constitution and encroaches on the independence of the Judiciary.”
24. The effect of the above provision was that the Contempt of Court Act, no. 46 of 2016, was rendered void ab initio. However, from the application dated 26th May, 2022, the 1st respondent did not base their application solely on the provisions of the Contempt of Court Act, but also on Section 10 (3) of the Magistrate’s Court Act.
25. Section 10 of the Magistrate’s Court Act stipulates as follows:
- (1) Subject to the provisions of any other law, the Court shall have power to punish for contempt.
 - (2) A person who, in the face of the Court —
 - (a) assaults, threatens, intimidates, or insults a magistrate, court administrator, judicial officer, or a witness, during a sitting or attendance in Court, or in going to or returning from the Court;
 - (b) interrupts or obstructs the proceedings of the Court; or
 - (c) without lawful excuse disobeys an order or direction of the Court in the course of the hearing of a proceeding, commits an offence.
 - (3) In the case of civil proceedings, the willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court constitutes contempt of court.



- (4) In the case of criminal proceedings, the publication, whether by words, spoken or written, by signs, visible representation, or otherwise, of any matters or the doing of any other act which—
 - a. scandalizes or tends to scandalize, or lowers or tends to lower the judicial authority or dignity of the court;
 - b. prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings; or
 - c. interferes or tends to interfere with, or obstructs or tends to obstruct the administration of justice, constitutes contempt of court.
- (5) A police officer, with or without the assistance of any other person, may, by order of a judge of the Court, take into custody and detain a person who commits an offence under subsection (2) until the rising of the Court.
- (6) The Court may sentence a person who commits an offence under subsection (1) to imprisonment for a term not exceeding five days, or a fine not exceeding one hundred thousand shillings, or both.
- (7) A person may appeal against an order of the Court made by way of punishment for contempt of court as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the Court.
- (8) The Chief Justice may make Rules to regulate procedures relating to contempt of court.

26. It is clear from the above provision of law, that under Section 10 (3) of the Magistrate’s Court Act, a Magistrate court now has the powers to punish for contempt not only the one’s committed in the face of the court, but also to punish for contempt in civil proceedings, for the wilful disobedience of its judgements, decrees, directions, orders and other processes.

27. The Court of Appeal in Ramadhan Salim versus Evans M. Maabi T/A Murhy Auctioneers & another [2016] KECA 756 (KLR); stated as follows regarding the jurisdiction of subordinate courts to punish for contempt of court:

“The only jurisdiction the magistrate’s court could exercise when dealing with contempt of court is, if it is committed in the face of the court. However, the *Magistrates’ Courts Act*, 2015 which came into force on 2nd January 2016 now gives the magistrate’s courts unlimited jurisdiction to punish for contempt. Section 10 of the said Act specifically provide: - “(1) Subject to the provisions of any other law, the Court shall have power to punish for contempt. (2) A person who, in the face of the Court-

- (a) assaults, threatens, intimidates, or insults a magistrate, court administrator, judicial officer, or a witness, during a sitting or attendance in Court, or in going to or returning from the Court;
- b) interrupts or obstructs the proceedings of the Court; or
- (c) without lawful excuse disobeys an order or direction of the Court in the course of the hearing of a proceeding, commits an offence



- 3) In the case of civil proceedings, the willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court constitutes contempt of court.”
28. Similarly, the court in *H A O v P L S* [2017] KEHC 5627 (KLR); stated thus: “Unlike in the past where the magistrates’ court had no jurisdiction to punish for civil contempt, the kind defined by section 10(3), there is now power to exactly do that. This piece of legislation commenced on 2nd January 2016. The suit herein was commenced after that legislation had come into force, and ideally it should have been commenced within Nairobi CMCCC No. 1264 of 2013.”
29. Given the above, I am of the view that the application by the 1st respondent dated 22nd May, 2022, was not invalid, as the same aside from being founded on the provisions of the *Contempt of Court Act*, was also anchored on the provisions of Section 10 (3) of the Magistrate’s Court Act, which gives subordinate courts unlimited jurisdiction to punish for contempt of court.
30. Turning now to the 2nd issue isolated for determination, the appellant was of the view that the learned trial magistrate was in error for finding Mr. Shakoor, its director, in contempt of court, whereas he was not a party to the suit and therefore had no knowledge of any orders affecting him. The 1st respondent on the other hand was of the view that Mr. Shakoor, being a director of the appellant, is the mind and will of the company, as such the court was right in finding him liable for any actions committed by the appellant.
31. From the ruling of the trial court, it is evident that Mr. Shakoor, the appellant’s director is the one that has been cited for contempt of court, for the alleged contempt committed by the appellant. It is also clear from the records of the trial court that the said director is not, in his personal capacity, a party to the suit. A company being a legal entity, separate from its members, it is important that a party who wishes to hold the directors or members of a company personally liable for actions committed by the said company, first make an application to lift the corporate veil in order to attach responsibility to the directors of the company; and then go for the said directors in their personal capacities.
32. The court in *Katsuri Limited versus Kapurchand Depar Shah* [2016] eKLR; stated as follows:
- “The other important aspect to mention is that 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. As matters stand now, the director is not personally liable for debts, actions or omissions of the company, hence the application before me is misdirected.”
33. Additionally, the court of appeal in *Geoffrey Kathuri Kison & 10 others versus East African Portland Cement Co. Ltd & 5 others* [2021] KECA 1043 (KLR); stated thus: “We also note that the 2nd to 6th respondents cited for contempt are directors and officers of a corporate entity not cited in the application, which begs the question whether in such case the directors of a company will be personally liable for contempt committed by and in the name of the company. In the persuasive authority of *Katsuri Limited v Kapurchand Depar Shah* [2016] eKLR, the High Court (Mativo, J.) in considering contempt by a director of a company observed and rightly so in our view that: “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.” It follows therefore that failure by the applicants cite the 1st respondent for contempt and to lift the corporate veil of the 1st respondent



denied them the chance to cite the 2nd to 6th respondents for contempt as directors or accounting officers of the 1st respondent.

34. It was therefore important for the 1st respondent to first make an application to lift the corporate veil before making an application to cite the appellant's director for contempt. This is so because, the company being a legal entity, the director of the company was shielded from liability for any of the actions committed by the company. Whereas the learned trial magistrate had in her ruling indicated that there was a need to lift the corporate veil in order to find the Mr. Shakoor liable for the appellant's actions, there was no indication that the 1st respondent had made an application to lift the corporate veil; as such Mr. Shakoor could not be found liable for the actions committed by the appellant.
35. Having stated that, I would also like to point out that the punishment issued out by the learned trial magistrate was excessive. I say so because, whereas the trial magistrate sentenced Mr. Shakoor to imprisonment for thirty (30) days and a fine of Kenya Shillings two hundred thousand (200,000); Section 10(6) of the Magistrate's Court Act only allows a punishment to imprisonment for a term not exceeding five (5) days or a fine not exceeding one hundred thousand shillings (100,000) or both.
36. Being that as it may it is evident that the application before the learned trial magistrate was misdirected and the learned trial magistrate ought to have dismissed the same.
37. Given the foregoing, I find that the present appeal is merited the same is hereby allowed with costs.
38. This appeal is allowed with costs to the Appellant. The findings of the learned trial magistrate dated 26th May, 2022, is hereby set aside.

DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 23RD SEPTEMBER, 2025.

HON. T. W. Ouya

JUDGE

