



**Callfast Services Limited v Rwandair Limited (Civil Case 122 of 2021)  
[2024] KEHC 65 (KLR) (Commercial and Tax) (11 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 65 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 122 OF 2021  
JWW MONG'ARE, J  
JANUARY 11, 2024**

**BETWEEN**

**CALLFAST SERVICES LIMITED ..... PLAINTIFF**

**AND**

**RWANDAIR LIMITED ..... DEFENDANT**

**RULING**

1. For determination before this Honourable Court is the Plaintiff's Notice of Motion dated 8/7/2022 brought under Section 5 of the *Judicature Act* (Cap 8 Laws of Kenya), The *Contempt of Court Act* 1981 and Part 81 of the *Civil Procedure (Amendment No.2) Rules 2012* both of England, order 40 rule 3 of the *Civil Procedure Rules 2010*, Section 3A of the *Civil Procedure Act*.
2. The Plaintiff seeks the following orders:-
  1. That the Honourable Court be pleased to order the attachment of all and/or any property of RwandAir Limited as may be within the Republic of Kenya to be attached through a duly appointed court bailiff and/or licensed auctioneer.
  2. That summons be issued against Betty Ingabire or any and/or other person as may for the time being be working as the Kenya Country Manager of RwandAir Limited to appear before court and show cause why he/she should not be committed to civil jail for such term as the court may deem just.
  3. That RwandAir Limited and Betty Ingabire and/or any other such person as may for the time being be the Kenya Country Manager for the said RwandAir Limited be cited for contempt of court and/or held to be in breach of the orders of this court of 27.5.2022 and be dealt with in terms of prayers (2) and (3) above as the circumstances may allow.



4. That the cost of this application be borne by RwandAir Limited and Betty Ingabire and/or any other person as may for the time being be the country manager for RwandAir Limited in Kenya.”
3. The application is premised on the grounds that on 27<sup>th</sup> May 2022, the court made certain orders whose terms were very clear and were made in the presence of the Defendant’s advocate.
4. The Plaintiff asserted that the said orders were extracted and served upon the Defendant’s advocates and the Defendant through one Betty Ingabire who is its Kenya Country Manager. That despite being served with the said orders of 27/5/2022, neither the Defendant nor Betty Ingabire complied with the same but instead actively engaged in activities that deliberately contravened the said orders. The Plaintiff has by this Application moved the Court to have the Defendant and or Betty Ingabire or her replacement found to have acted contemptuously and be held liable for disobeying the court orders and therefore be punished in accordance with the law.
5. In opposition, the Defendant filed a replying affidavit sworn on 27<sup>th</sup> July 2023 by Betty Ingabire, its Country Manager in Kenya. In the said affidavit she averred that the Defendant filed an application for stay of execution of the aforementioned order in the Court of Appeal, which application was heard on 23<sup>rd</sup> August 2022 and a ruling was reserved for 2<sup>nd</sup> December 2022. That however, the ruling was not delivered and the Defendant’s advocates were informed that it would be delivered on notice. That to date, the said ruling is yet to be rendered by the Court of Appeal.
6. The Defendant further contended that there was no intention by it to refuse to obey the court order but has instead been waiting for the Court of Appeal to deliver its ruling on the stay of execution. In addition to the delay in the delivery of the ruling by the Court of Appeal, the Respondent submitted that the Plaintiff had indicated through its advocates that it intended to amend its plaint, leading to ambiguity as to what orders the new amendments would entail and hence creating confusion as to the final prayers sought by the plaintiff.
7. It was the Defendant further assertion that the instant application has not met the required standard of proof for the contempt of court orders to be granted since the Applicant had not demonstrated how and in what way the Defendant had gone about in its disobedience of the courts orders and had not met the threshold required for contempt of court order to issue. The Respondent urged the court to dismiss the application as lacking in merit.

#### **Analysis and Determination**

8. I have carefully considered the Application by the Plaintiff and the response filed by the Defendant. I have also further considered the rival submissions filed thereto. I note that on 27/5/2022, the Mshila J made the following order:-

“an interim injunctive order shall issue barring the Respondent either by itself, its agents, servants, assigns and/or whosoever acting through and/or under it from in any manner whatsoever entering into and/or performing another cargo general sales agency agreement with any other person and/or entity other than the applicant relating to the Nairobi territory, adversely interfering with the ongoing cargo general sales agency business arrangement between the Applicant and the Respondent and specifically from limiting the applicant’s access to its cargo management tool for booking cargo and/or shipments also known as “cargo spot” as well as from supplying the Applicant with less than 100 air waybills



per month pending the hearing and determination of this suit or arbitration proceedings to be instituted by the parties.”

9. The above orders are what the Applicant has urged the Court to find that the Defendant failed to adhere to and to hold the Defendant or its employee, Betty Ingabire, in contempt thereto. The only issue, in my view that arises for determination is “whether the Respondent is in contempt of the orders of this court issued on 27<sup>th</sup> May 2022.” From court record, I note that the Defendant and its advocates were served with and/or were aware of the said orders but that the Defendant had obtained a temporary stay of execution from this court which lapsed but also moved the Court of Appeal and filed a substantive Application for stay of execution of the said order on 9<sup>th</sup> June 2022 in the Court of Appeal. Subsequently, the Court of Appeal was to deliver a ruling on the stay of execution application on 2<sup>nd</sup> December 2022 but did not do so instead informing the Defendant that the same would be delivered on notice. At the time of writing this ruling, the Court of Appeal is yet to deliver its ruling on the stay of execution application before it. The record shows that the Defendant made a timely effort to file an application for stay of execution in the appellate court, however through no fault of its own, the ruling has not been delivered.
10. In opposing this application, the Defendant urged the court to be guided by several decisions of the Court of Appeal. In the case of *Mengich t/a Mengich & Co Advocates & another -vs- Joseph Mabwai & 10 others* (2018)eKLR the court observed that “the principle that the power to commit for contempt is one to be exercised with great care and that an order committing a person to prison for contempt is to be adopted only as a last resort”. Similarly, the court in *Peter K Yego & others -vs- Pauline Nekesa Kode*(2009)eKLR, the court recognized that contempt of court is a quasi-criminal sanction and “that it must be proved that one actually disobeyed the court order before one is cited for contempt and that.....the applicant in an application for contempt must prove beyond peradventure that the Respondent is guilty of contempt”. The above two decisions resonate with my findings in the case before me. The threshold for holding a party to contempt is definitely higher than a balance of probabilities since the said findings by the court carry with it penal consequences that should not be lightly visited on a litigant. The Applicant has, in my view, not established that the Respondent deliberately went out of its way to disobey the orders of this court as alleged.
11. In view of the same, I am therefore persuaded that it would not be in the interest of justice to grant the prayers sought in the instant application before the Court of Appeal has pronounced itself on whether or not it will grant a stay of execution of the orders issued by this court. If the stay is not granted, the Plaintiff will be promptly required to comply with the court orders of May 27, 2022. It would be a waste of judicial time to hold the Plaintiff in contempt and issue punitive measures at this point while there is a possibility that the appellate court may stay execution of the aforementioned orders.
12. I therefore dismiss the subject application with no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 11<sup>TH</sup> DAY OF JANUARY, 2024.**

**J.W.W. MONG'ARE**

**JUDGE**

In the Presence of:-

Mr. Malanga for the Applicant.

Ms. Susan Ndirangu for the Respondent.

