



**Imports By Kairo Limited & another v Wambui (Civil Appeal  
E194 of 2022) [2024] KEHC 2106 (KLR) (Civ) (1 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2106 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E194 OF 2022**

**AN ONGERI, J**

**MARCH 1, 2024**

**BETWEEN**

**IMPORTS BY KAIRO LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**CLEMENT VICTOR KINUTHIA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JOSEPH KAIRU WAMBUI ..... RESPONDENT**

**RULING**

1. The application coming for consideration in the one dated 12/10/2023 brought under Sections 1A, 1B, 3A and 63(e) of the [Civil Procedure Act](#), Cap 21 Laws of Kenya and Order 51 of the [Civil Procedure Rules](#), Section 5 of the [Judicature Act](#) and all other enabling provisions of the law seeking the following orders;
  - i. That this application be certified urgent and be heard ex-parte on the first instance.
  - ii. That the court be pleased to find that Joseph Wambui, the defendant/respondent herein is in contempt of court for disobedience of the orders issued by this court on 24<sup>th</sup> February, 2023.
  - iii. That summons do issue to the respondent, requiring him to appear in person to show cause why he should not be punished for contempt.
  - iv. That the court do issue an order for the respondent to be committed to civil jail for a period of six (6) months for contempt of court.
  - v. That the honourable court grants any other order or further orders of the honourable court geared towards protecting the dignity and authority of the honourable court deemed expedient in the circumstances.



- vi. That the costs of this application be met by the defendant/respondent.
2. The application is supported by the affidavit of Clement Kimani in which he deposed that vide a ruling delivered on 24<sup>th</sup> February, 2023 this court issued injunctive orders restraining the defendant/respondent whether by himself or through his servants or agents and or assigns from spreading the posts or continuing to circulate the defamatory material against the plaintiffs.
  3. That despite the respondent being served with the interim orders he has inexcusably been in flagrant disobedience of the said orders and has continued to defame the applicants and continued to utter and publish and circulate the defamatory statements against the respondent.
  4. That on 5<sup>th</sup> October, 2023 the respondent published the following on his (x) twitter page @Khalifkairo;  

“..leo natoa testimony juu nikikosa kutoa io ni vita ya Mungu, (today I am giving a testimony since I failed to give its gods war) the IBK chaps sued me for 60m after my shock resignation and said I had stolen from clients defamed them etc,,,,, so these fools to get kai and Karo shut through court..... it didn't work. Paid NMG to run a fake story on me, even wrote Lynn Nguigi of LNN emails threatening to sue her after the interview and planted fake storos through proxies pale kwa Edga and Tuko news.

I don't know what God did exactly but he fought the matter seemingly disappeared from court ..... my tormentors are now ironically running away from lawyers of people he scammed including investors its just a matter of time before you start seeing DCI stories when victims start coming out.....”
  5. That further to the above on the same date the respondent continued with the willful disobedience of this honourable courts orders in a further post on the same twitter page i.e @KhalifKairo he posted the following;  

“....I owned the company. Anyway there is a major dossier coming from IBK that will shock you. Jamaa aliniosha pia ameosha investors, staff and customers and it's just a matter time muone mastory uku’

Loosely translated to mean that: the applicants are fraudsters and have defrauded him, investors, customers and employees and that it's just a matter of time before the stories come to light
  6. That the defamatory statements constitute injury to the applicant's reputation and continues to subject him to spite and public odium by people who respected him.
  7. That the orders of 24<sup>th</sup> February, 2023 were clear and the respondent conduct was deliberate and in blatant breach manifesting disdain and disobedience of the authority of the court.
  8. That the respondent ought to protect the dignity and authority of the court process but the willingly disobeyed and continues to disobey the injunctive orders of this honourable court by continuing to defame the plaintiff/applicant.
  9. That it is not open for the respondent/defendant to choose whether or not to comply with the orders issued by the court. In order to protect the sanctity of this court, the court should intervene by allowing this application for contempt and meet appropriate punishment.



10. The respondent filed a replying affidavit opposing the application in which he stated that the Respondent had previously appointed the law firm of Aoko Githara & Company Advocates to represent him in this matter.
11. That the said firm of advocates ceased acting on his behalf without any notice or communication and additionally never advised him on the orders issued by the Honourable Justice J. K. Sergon on 1<sup>st</sup> March 2023 with regards to the proceedings herein and their implications, if any.
12. That notwithstanding the foregoing, the respondent has since appointed the firm of Mwaniki Gachoka & Company Advocates who have advised him that this Application is devoid of merit and an abuse of the court process.
13. That this application is merely intended to curtail my freedom of expression as enshrined in the *Constitution*.
14. That this application further fails to meet the legal threshold to hold him in contempt of the orders of this court issue on 1<sup>st</sup> March 2023.
15. That the orders issued on 1<sup>st</sup> March 2023 are not unambiguous and clear on what material is considered defamatory towards the plaintiffs.
16. Further, that the telephone number through which the orders were allegedly served is no longer his personal number as he handed over it to his employees for use in his business and thereafter obtained a personal telephone number, particularly 0722750570.
17. That the respondent was not aware of the said orders as they were not personally served upon him.
18. That the posts complained of by the plaintiffs were not in any way made with the intention to defame or harm the reputations of the plaintiffs herein as they are substantially true and based on factual occurrences.
19. That many customers, investors and employees of the plaintiffs have approached the respondent with complaints that they have been swindled of their money by the plaintiffs in the hope that the respondent will be able to assist them recover their money from the plaintiffs.
20. That some of these people have approached him under the mistaken assumption that he is still a business associate of the plaintiffs as their business still uses the respondent's alias as their trade name.
21. That the 2<sup>nd</sup> plaintiff has been charged for obtaining money by false pretence contrary to section 313 of the Penal code.
22. The applicant filed a further affidavit dated 13/11/2023 stating that the respondent is being untruthful and is deliberately lying as his previous advocates on record filed an Application to cease acting and the same was set to come up for hearing on 6/7/2023.
23. On the said date, the court directed them to serve the Respondent with the Application to cease acting and before the Application was heard and allowed on 9/8/2023, the said firm of Aoko Githaka Advocates LLP effected service to the Respondent and an affidavit of service dated 8/8/2023 was filed as proof of service.



24. He stated further that the respondent is deliberate contempt of as in his social media post he acknowledged that he did not care at all whatever directive the court had given on the matter that he chose to disobey. In his post he stated
- “...I didn’t do shit, I did file a defence in court but one day I got pissed and told God, am not spending a single coin on any lawyer, if this guy will fuck me up in court so be it...”
25. He stated that the respondent has used his social media platforms to disparage the reputation of his company with aim to benefit the respondent’s new entity established after his resignation from the 1<sup>st</sup> plaintiff. When the ruling was delivered the respondent’s advocates were present in court and it is therefore not true that the respondent was unaware of the said orders.
26. He stated that the respondent has gone on a rampage and has continued to call individual customers asking them to cancel all orders that have been placed in his company or else risk to lose their money. He has threatened investors and has convinced others to opt to work with him.
27. The parties filed written submissions as follows; the applicant submitted that the respondent was duly served through his WhatsApp Number 070333XXXX and an affidavit of service dated 7/3/2023 was filed together with the present application.
28. Further, that according to the social media posts complained of, the Respondent confirms being aware of the ruling but expresses his lack of interest in the judicial process by claiming:
- “...these fools tried to get Kai and Karo shut down through the courts. It did not work.”
29. The applicant submitted that the respondent has claimed in his social media posts that the plaintiffs have conned their investors and customers.
30. That this is not a truthful statement but a continued act of commercial disparagement meant to benefit his new company, Kai and Karo Ltd. To demonstrate this intention, he proceeded to promote his company pages on the Plaintiff/Applicants’ social media pages, knowing well they both engage in the motor vehicle business.
31. It was argued that the respondent is therefore in contempt as his conduct and actions defied the authority of this court. The Respondent does not care to respect what this court of law directed him to do or not to do. It is why he has proceeded to act as if the said orders do not exist in utter contempt and spite of this Honorable court’s directives.
32. The applicant submitted that the Respondent has not denied making the publications in his social media pages, he in fact confirms and claims that the same were not unambiguous, to clarify his assertion he is of the view that his posts on social media amounts to his freedom of expression, which this court had rightfully limited by an order of court. the applicant relied on *Yatani v Raso* (Civil Suit E029 of 2021) [2023] KEHC 2150 (KLR) (Civ) (16 March 2023) (Ruling) where it was held
- “While there is some merit in the respondent’s indirect assertion that orders restraining defamatory statements ought to be crafted in a precise manner, the court does not agree with him that the order sought to be enforced herein has been misrepresented by the applicant, is too wide and or obscure in its terms. Indeed, if he considered the orders too wide or obscure for observance, he ought to have applied to the court to have the orders set aside, varied and or clarified. Consequently, the respondent’s specious arguments in defence of his admitted published statements concerning the applicant on November 5, 2021 do not hold water.



In my considered view his actions are deliberate and constitute willful disobedience of the interim orders of the court.”

33. The respondent alternatively submitted that the application herein fails to satisfy the elements requisite for holding the respondent in contempt and as contained in the case of *Sheila Cassatt Issenberg & another v Anthony Macharia Kinyanjui* [2021] eKLR, echoed the sentiments expressed by Cromwell J in the Supreme Court decision of *Carey v Laiken*, 2015 SCC 17, expounding on the three elements of civil contempt that must be established to the satisfaction of the Court:
- i. The Order alleged to have been breached “must state clearly and unequivocally what should and should not be done” This ensures that a party will not be found in contempt where an order is unclear. An order may be found to be unclear if, for example, it is missing an essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning
  - ii. The party alleged to have breached the order must have had actual knowledge of it. It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the willful blindness doctrine.
  - iii. The party alleged to be in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order complies.
34. The respondent maintained that he was not kept apprised of the developments in the subject proceedings by M/S Aoko Githara & Company Advocates as the firm had ceased to act on his behalf without providing prior notice, thereby leaving his interest unrepresented.
35. That further, the mobile number 072275XXXX ceased to be associated with the respondent as it had been transferred to his former employees subsequent to his cessation as director in the 1<sup>st</sup> applicant.
36. The respondent argued that the posts made by the respondent on his social media platform were not intentionally crafted to contravene the court order issued on 1/3/2023 or to defame the applicant herein. The posts were grounded in factual occurrences and conveyed true information.
37. The respondent however indicated that he is willing to rectify any perceived contempt by retracting and deleting the posts that the applicants have raised concerns about. That this act of retraction demonstrates the respondent’s commitment to complying with the directives of the court and rectifying any unintended actions that may have been perceived as contemptuous.
38. The issues for determination in this application are as follows;
- i. Whether the defendant/respondent is in contempt of this court’s order.
  - ii. Whether summons should be issued against the defendant/ respondent to show cause why he should not be committed to civil jail for 6 months for contempt of court.
39. On the issue as to whether the defendant is in contempt of court order there is evidence that on 24/2/2023, this court issued orders as follows;
- “Pending the hearing and determination of this suit, an order of Temporary Injunction be and is hereby issued to restrain the Respondent whether by himself and/or through his servants, agents and/or assigns or any other person from spreading the posts or circulating or continuing circulate the defamatory material against the plaintiffs.
- Costs of the Motion shall abide the outcome of the suit”.



- 40. I find that the applicant has established that the defendant has continued to malign the applicant despite the order.
- 41. In the case of *Bob Collymore & another v Cyrian Nyakundi* [2016] eKLR where the court cited the holding of the Court of Appeal in *Wildlife Lodges Limited v Narok County Council & 3 others* [2011] eKLR as follows:-

“It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a court of competent jurisdiction to obey it until that order was discharged, and disobedience of such an order would, as a general rule, resulting the person disobeying it being in contempt and punishable by committal or attachment and in an application to the court by him not being entertained until he had purged his contempt. A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid – whether it was regular or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed....”

- 42. Summons to issue to the defendant to appear in this court on 15/4/2024 to show cause why he should not be punished for being in contempt of court unless he purges the contempt.
- 43. The application dated 12/10/2023 is allowed with costs to the applicant.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 1<sup>ST</sup> DAY OF MARCH, 2024.**

.....  
**A. N. ONGERI**  
**JUDGE**

In the presence of:  
..... for the Appellant  
..... for the Respondent

