



**Ndegwa & another v Mwangi (Civil Appeal E892 of 2023)
[2024] KEHC 9378 (KLR) (Civ) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9378 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL APPEAL E892 OF 2023
JN MULWA, J
JULY 25, 2024**

BETWEEN

HETA GEOFFREY NDEGWA 1ST APPELLANT

JULIUS GACHUGU MAIN 2ND APPELLANT

AND

ELIJAH MWANGI RESPONDENT

RULING

1. The Applicants were dissatisfied with trial courts judgment dated 21/07/2023 in small Claims E2273/2023 wherein they were condemned to full liability and quantum of Kshs. 762,750 with costs and interests. They lodged this Appeal and simultaneously filed the Notice of Motion dated 4/09/2023 seeking orders of stay of execution pending hearing and determination of the Appeal.
2. On 6/09/2023, the court (Meoli J.) granted conditional stay orders conditional to applicants depositing security in count of Kshs. 400,000/= by 6/10/2023.
3. On 6/11/2023, the court (Meoli J.) upon consent of the parties, a sum of Kshs. 835,550/= was to be deposited in an interest earning account in joint names of the parties advocates inclusive of the initial Kshs. 400,000/= within 60 days and further the court directing that the sum of Kshs. 400,000/= earlier deposited in court to be released to the applicant to facilitate the deposit into a bank account.
4. By an application dated 31/01/2024 the applicants once again moved the court for further orders of stay of further execution of warrants of attachment issued against the applicant apparently issued on 24/01/2024 same day the vehicle was attached and unconditional release of the attached motor vehicle registration no. KCF 8XXX Isuzu bus, which was under threat of sale by the attaching Auctioneers.



5. Reasons given for the attachment were stated in the supporting affidavit sworn on 31/01/2024 as non-compliance with the consent orders dated 6/11/2023 which were to be complied with by 6/01/2024 but which were compiled later after the 6/01/2024.
6. On 30/01/2024, this court issued a status quo order pending hearing and determination of the motion on 19/03/2024 on which date both parties argued their respective cases before me.
7. I have considered the parties cases by their respective affidavits and oral arguments. At this date, 19/03/2023 the applicant informed the court that the subject motor vehicle had been sold in a public auction on 2/02/2024, despite the orders of status quo issued on 30/01/2024.
As stated above the vehicle had been attached on 24/01/2024.
8. By Chamber Summons Application dated 23/02/2024 brought under the Judicature Act Chapter 8 Laws of Kenya and Article 159(2) (d) of the Constitution, the Applicants sought orders to hold and find the Respondent in contempt of court orders issued on 30/01/2024 directing orders of status quo in the matter pending hearing of the Notice of Motion dated 29/01/2024 and 19/03/2024; and to order immediate release of the motor vehicle insurer (Direct-line Assurance Ltd) property illegally attached and sold with costs to the respondent.
9. I have considered the grounds for the application and supporting affidavit as well as the opposing replying affidavit sworn on 16/03/2024 by the Respondent.
10. There was an order of status quo in place at the time the motor vehicle at issue was sold. The status quo as at date of the impugned orders of 29/01/2024 was that the motor vehicle had already been attached under instructions of the respondent and was under custody of Direct “O” Auctioneers, agents of the Respondent and therefore the vehicle was to remain under the auctioneers custody to await the ruling that was scheduled for 25/07/2024.
11. In his replying affidavit, the Respondent Elijah Mwangi faults the supporting affidavit for having been sworn by an advocate for the applicants. The respondent was well aware of the court orders of status quo having been served upon his advocates who at all times represented him in the proceedings and specifically Mr. Mwangi Advocate.
12. On his part, Mr. Mwangi Advocate during the interpartes hearing of the motion dated 29/01/2024 told the court that the vehicle though attached had not been sold which information informed the court to extend the status quo orders but tactfully also stated that if the vehicle had been sold, then the appropriate action was to commence a substantive suit.
13. The respondent further argued that by his affidavit that he cannot be held in contempt of court orders as the execution against the Appellants/Applicants was unlawful upon their failure to comply with Conditional Stay Orders of 6/11/2023 more specifically the consent orders, more particularly that no deposits were made in the interest earning account of the parties advocates as ordered by the court on 6/01/2024.
14. It is thus argued that the consent orders of 6/11/2023 could only have been set aside by another consent order.
15. The court notes that the consent order recorded in court on 6/11/2023 directed the applicants to deposit some money into an interest earning account, upon which the attached vehicle was to be released. Subsequent court orders were also issued upon several motions filed by the applicants during which hearing the respondent was duly represented.



16. The court noted that by 30/01/2024 when considering the motion dated 29/01/2024 under certificate of urgency the consent orders had been complied with, and deposits made into a bank account. However, by paragraph 12 and 13 of the replying affidavit the respondent gives details of where and when the deposits were made, not into an interest earning account in joint names of the parties advocates but in a current account at Equity bank thus denying the respondent interest on the deposited money.
17. At no time did the applicants inform the court of the above material facts changing the court orders to suit themselves without a variation order from the court or by consent of the respondent. Further, a notification of sale of the vehicle exhibit EM – 3 has been provided to the court.
18. In their supporting affidavit the applicants have failed, I think deliberately to bring to the courts attention all these salient events after the court orders were issued and further noting that the respondents were not notified of the opening account details, which was in any event not in compliance with the consent orders.

Equity demands that he who comes to court must come with clean hands. For the court to issue an order for contempt of court orders and holding such party in contempt the circumstances must be very plain and clear, and the terms of the court orders said to be disobeyed also very clear, and the contemnor must be duly served and given an opportunity to defend himself.

19. There is no doubt that it is the applicants who have been withholding necessary and material information from the court, thus approaching it with dirty hands.

Contempt orders are made to address behavior both in and outside the courtroom. It is willful disobedience of court orders that the applicants have demonstrated by their conduct.

For the foregoing, I find the chamber summons application dated 23/02/2024 without merit. It is dismissed with costs.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 25TH DAY OF JULY 2024.

JANET MULWA

JUDGE

