



Mau Narok Nissan and Co-operative Society Ltd v Langas & 3 others (Civil Appeal E011 of 2021) [2024] KEHC 12245 (KLR) (3 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12245 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL APPEAL E011 OF 2021
F GIKONYO, J
OCTOBER 3, 2024**

BETWEEN

MAU NAROK NISSAN AND CO-OPERATIVE SOCIETY LTD APPLICANT

AND

SAMMY P. LANGAS 1ST RESPONDENT

PARSALOI OLE SAPURR 2ND RESPONDENT

OLOORU OLE NTETE 3RD RESPONDENT

EQUITY BANK, NAROK BRANCH 4TH RESPONDENT

RULING

Contempt Proceedings

1. These are contempt of court proceedings commenced by way of a chamber summons application dated 5th March 2024 which is expressed to be brought under Section 5(1) of the Judicature Act CAP 8 of the Laws of Kenya, Sections 3, 3A, and 63 of the Civil Procedure Act CAP 21, Order 52 Rules 2(2) of the Rules of the Supreme Court of England, and specifically seeking the following orders:
 1. Spent.
 2. That this Honourable court be pleased to grant leave to the Applicant to institute contempt of court proceedings against the Respondents Sammy P Langas, Parsaloi Ole Sapurr, and Olooru Ole Ntete.
 3. That the Respondents Sammy P Langas, Parsaloi Ole Sapurr, and Olooru Ole Ntete be committed to civil jail for contempt for disobedience of the orders issued on 29/01/2024 in Narok HC Civil Appeal No. E011 OF 2021 restraining the 1st-3rd Respondents from operating, trespassing, collecting fare, receiving money for sending parcels, or collecting money



from the passengers from the Appellants' vehicles or business within the Appellant's business premises/offices at Narok County.

4. Costs of this application be provided for.

Supporting affidavit

2. The application is supported by the supporting affidavit sworn by the chairperson of the appellant/applicant, Bernard Mbui on 05/03/2024.
3. It was averred that this court (Gikonyo J), delivered judgment and decree in this matter on 29/01/2024 with several orders, inter alia, a permanent injunction restraining the respondents from collecting money from the applicant's vehicle passengers or within the applicant's business premises in narok county.
4. The said decree was served upon the 1st-3rd respondents on 01/02/2024 along with letters notifying the respondents to comply with said within 10 days of service.
5. At the time of instituting this application, the 1st-3rd respondents continued to collect money from the applicant's passengers and issue forged, falsified, and fake receipts in flagrant violation of this court's orders.
6. The 1st-3rd respondents have also failed, refused, and/ or neglected to settle the decretal sums of Kshs 12,732,000/= and Kshs. 3,000,000/= up to the date of filing of filing this application.
7. The persistent contravention of duly served court orders is occasioning considerable harm to the applicant not least financial loss incurred by the 1st-3rd respondents' illegal collection of revenue due to the applicant's business.
8. The dignity and authority of the court need to be protected jealously so as to enhance public confidence in the judiciary.
9. It is therefore in the interest of justice that the orders sought be granted.

Replying Affidavit

1st, 2nd and 3rd respondents replying affidavit

10. The 1st, 2nd, and 3rd respondents opposed the application vide replying affidavit sworn by Sammy Parsimei Langas on 08/03/2024.
11. The 1st, 2nd, and 3rd respondents contend that they are not in contempt of the decree issued on 29/01/2024. They were not served. There is no filed affidavit of service to prove service. They only saw the decree for the first time as an annexure in this application. Their advocate Mr. Masikonde never shared with them a copy of the said decree if at all he had been served. The decree itself has no penal notice appended thereto.
12. The 1st, 2nd, and 3rd respondents contend that the costs of this appeal and that of the lower court are yet to be taxed.
13. The 1st, 2nd, and 3rd respondents contend that they have not been able to pay Kshs. 12,732,000/= which inability cannot give rise to contempt of court because the law sets out a procedure of execution of such a decree under order 22 of the civil procedure rules.



14. The 1st, 2nd, and 3rd respondents denied ever collecting any monies from the passengers of the applicant. The 1st, 2nd, and 3rd respondents contend that the receipts are undated, unsigned and 90% are blank and their issuance cannot be ascertained. one cannot tell whether the receipts originate from Nakuru or the narok office as none show the destination of the vehicles alleged. Some of the receipts are those of the years 2012, 2020, and other years prior to the date of judgment.
15. The 1st, 2nd, and 3rd respondents averred that monies collected by Mr. Saaya from the applicant's vehicle passengers are deposited directly into the applicant's equity bank-Narok branch account number 013019xxxxxxx through Mr. Charles Mwangi Kimani the equity bank agent.
16. The 1st, 2nd, and 3rd respondents contend that they have never been to the applicant's business premises since this appeal was determined. The 3rd respondent has been sickly and very frail since around 2020 and he is also blind after undergoing chemotherapy at Nairobi West Hospital. He cannot walk without a helper. Furthermore, the applicant has a team of employees on the business premises who carry out all their business.
17. The 1st, 2nd, and 3rd respondents prayed that the application be dismissed.

Supplementary Affidavit.

18. The applicant filed a supplementary affidavit sworn by Benard Mbui on 21/03/2024.
19. The applicant averred that service upon the contemnor's advocates constitutes proper notice as an alternative to personal service. The respondents thus had proper notice as an alternative to personal then advocates on record. Ignorance of the decree's contents is thus no fault of the applicant as the onus of explaining the decree's contents lay with the respondents' advocates to them as clients. The decree issued on 29/01/2024 was properly served thus within the knowledge of the respondent's counsel.
20. The applicant averred that it has embarked on the execution process. The legal avenue of pursuing execution is under order 22 rules 6 and 7 of the Civil Procedure Rules, 2010. an application for execution was filed seeking recovery of the decretal sum of Kshs. 12,732,000/= and awarded costs of Kshs. 1,782,480/=. The application was assessed and paid for and only awaits determination by the deputy registrar.
21. The applicant contends that the receipts are signed and inscribed upon albeit faint due to the fact that they are photocopies. The applicant is willing to table the original forged receipts in advance. The applicant has uploaded the original pdf receipts on the Narok High Court e-filing portal.

Directions of the court

22. The application was canvassed by way of written submissions.

The applicant's submissions

23. The applicant submitted that the 1st-3rd respondents are in direct breach of orders 6 and 7. The applicant contends that proof of personal service was unnecessary. Therefore, the applicant has proved contempt of court to the requisite standard of proof and the 1st-3rd respondents ought to be individually cited for contempt and appropriate penalties follow. The applicant relied on Alfred Mutua v Boniface Mwangi [2022] eKLR, Samuel M. N. Mweru & others v National Land Commission & 2 others [2020] eKLR, Shimmers Plaza limited v National Bank of Kenya limited [2015] eKLR, and Basil Criticos v Attorney General & 8 Others & 4 Others [2012] eKLR.



The 1st, 2nd and 3rd respondent submissions.

24. The 1st, 2nd, and 3rd respondents submitted that contempt cannot attach since the respondents were never served with the decree of 29/01/2024 and the evidence tendered by the applicant in an attempt to prove contempt falls short of the required standard and as such, the applicant has failed to discharge its burden of proof. The 1st, 2nd, and 3rd respondents relied on section 5 of the *Judicature Act, contempt of Court Act* of 1981, part 81 of the procedure in the Civil Procedure (Amendment No. 2) Rules, 2012, *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR, and *MNN V JMM* [2022] eKLR.

Analysis And Determination

Issues for Determination

25. The issue for determination is: -

i. Whether the 1st, 2nd and 3rd respondents are in and should be punished for contempt of court

Essential elements of contempt

26. A successful civil contempt proceeding proves; (i) the terms of the order; (ii) Knowledge of these terms by the Respondent; and (iii) Failure by the Respondent to comply with the terms of the order (*Kristen Carla Burchell vs Barry Grant Burchell, Eastern Cape Division Case No. 364 of 2005*).
27. The applicant annexed a copy of the subject decree in their supporting affidavit which sets out all fifteen orders issued by the court.
28. The applicant contends that the 1st-3rd respondents are in direct breach of orders 6 and 7.
29. Order 6 is a permanent injunction restraining the respondents from inter alia collecting money and receiving money from the applicant's passengers.
30. Order 7 is a mandatory injunction compelling the respondents, whether by themselves or their agents from interfering with the applicant's vehicles.
31. In their replying affidavit, the 1st-3rd respondents refute knowledge of the order in question on the basis that they were not personally served with the decree. They also contest proof of service of the decree because no affidavit of service was filed to that effect.
32. The critical question which thus arises is; whether the respondents had knowledge of the orders in question.
33. The applicant contended that, the advocates for the parties were present when the judgment was delivered. Stated further that, the decree and terms thereof were shared with the advocates via a letter delivered on 1/02/2024 to their email address. Therefore, according to the applicant, proof of personal service was unnecessary.
34. Perusal of record reveals that, on 28/11/2023 when the orders were issued, there was legal appearance for both divides.
35. There is also proof of service of the decree upon the respondents' advocate.
36. The respondents have also been attending court during these proceedings-trial and post judgment- and were absolutely aware of the orders in question and their purport.



37. Jurisprudence now emphasizes knowledge of the existence of Court orders as opposed to strict personal service. In the case of *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR the Court of Appeal posed the question; whether knowledge of a Court order or judgment by an Advocate of the alleged contemnor would be sufficient for the purpose of contempt proceedings? And answered the question in the affirmative stating:
- “We hold the view that it does. This is more so in a case as this one where the Advocate was in Court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an Advocate appears in Court on instructions of a party, then it behooves him to report back to the client all that transpired in Court that has a bearing on the clients’ case...”
38. It bears repeating that, in this case, the respondents have been attending court and were fully aware of the orders and their purport. Merely blaming their advocate is but an excuse.
39. Has the applicant proved disobedience of the court orders?
40. From what they told the court, it appears that the 1st-3rd respondents have continued to receive money from passengers but which they say is for their vehicles. This was not established. The court restrained the respondents from receiving any money from passengers of vehicles falling under the applicant’s business. The applicant has proved that the respondents have continued to receive the money contrary to the order of the court. And, therefore, are in contempt of court.
41. However, the court wishes not to rush to impose punitive penalties as yet because the respondents appear to be prepared to comply. Instead, the court gives them the last warning to stop any further disobedience of the court orders in issue. If the disobedience persists, the court may consider other punitive and coercive measures against the respondents.
42. The application, therefore, succeeds in the specific terms stated above. The respondents shall pay costs of the application.
43. Before closing, although there is a nexus between contempt of court proceedings and the decree, however, parties correctly made the distinction between execution of the decree to recover the decretal sum and contempt of court proceedings intended to purge disobedience.
44. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH THE TEAMS APPLICATION,
THIS 3RD DAY OF OCTOBER, 2024.**

.....

HON. F. GIKONYO M.

JUDGE

In the Presence of:

C/A – Otolu

Okumu for Applicant – Present

Ochieng for 4th Respondent – Present

Karanja Mbugua - Present

