



**Margaret Warui t/a Wanken Distributors & another v Board of Management Abederare Teachers Training College (Civil Appeal E004 of 2021) [2023] KEHC 563 (KLR) (9 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 563 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
CIVIL APPEAL E004 OF 2021  
CM KARIUKI, J  
FEBRUARY 9, 2023**

**BETWEEN**

**MARGARET WARUI T/A WANKEN DISTRIBUTORS ..... 1<sup>ST</sup> APPELLANT**

**PAUL K. OLE YIALE NASIOKI AUCTIONEERS ..... 2<sup>ND</sup> APPELLANT**

**AND**

**BOARD OF MANAGEMENT ABEDERARE TEACHERS TRAINING COLLEGE ..... RESPONDENT**

**JUDGMENT**

1. The appellants' herein instituted the instant appeal as per the amended memorandum of appeal dated June 25, 2021, having been aggrieved and/or dissatisfied with the ruling of the Chief Magistrate Court delivered on the February 22, 2021.
2. This appeal resulted from the primary suit Nyahururu CMCC No 254 of 2019 against the respondent for a liquidated sum of Kshs 1,529,148.00/- accruing from goods sold to the respondent herein.
3. This was after the respondent failed to enter appearance and/or file a defence; therefore, judgment was entered against them for the said amount, and a decree was issued in that regard.
4. The respondent filed an application to set aside the interlocutory judgment dated July 15, 2020 seeking for stay of execution orders pending the hearing and determination of the main suit, and the same was allowed.
5. On July 30, 2020, both parties appeared before the trial court and expressed their willingness-of- an out-of-court settlement, and a mention date was slated for August 10, 2020.
6. According to the appellants herein, the respondent did not seek for an extension of the temporary orders of stay of execution on July 30, 2020 and never continued with the negotiation process nor



prosecuted the application dated July 15, 2020. It was only after the decree herein was partially executed through a warrant issued by the lower court that the respondent re-emerged, citing the appellants for contempt of court orders *vide* the application dated November 2, 2020.

7. Contrarily, the respondent stated that the appellants misled the court and sought for warrants of attachment to be reissued upon their motor vehicle registration No KCK 1xxx led the respondent to file the application dated November 2, 2020.
8. The court proceeded to give the ruling dated February 22, 2021 in favour of the respondent, declaring that the appellants misled the court and were indeed in contempt of court orders issued on July 15, 2020.
9. It is on this basis that the appellants brought the instant appeal challenging the ruling delivered on February 22, 2021, the impugned ruling herein

### **appellants' Written Submissions**

10. The appellant submitted that their interpretation of the temporary order of stay was to remain in force up to July 30, 2020, when the matter was to be heard *inter partes*, at which instance the trial court was to exercise its discretion in extending the said order either on application by any of the parties, *suo moto* or by consent. In essence, the said order was meant to and actually lapsed on July 30, 2020 and was then subject to extension by the court or otherwise, but the same did not happen.
11. It was stated that the court has no authority to *mero motu* extend the life of a lapsed order irrespective of whether or not the relief sought is dependent on the existence of the rule nisi, meaning that on the return date when the matter is postponed, and there is no order of court dealing with the life of the rule nisi, the rule then lapses and consequently the umbrella of protection afforded to the applicant by the rule falls away leading to the discharge of the duty of compliance on the respondent or defendant post expiry of the rule. Reliance was placed on the case of *MV Snow Delta Serva Ship Ltd v Discount Tonnage Ltd 2000 (4) SA 746 (SCA)* & [\*National Director of Public Prosecutions v Walsh and Others 2009 \(1\) SACR 603 \(T\)\*](#)
12. The appellant reiterated that it is the sole duty of the applicant when postponing a return day for a matter incorporating a rule nisi order to bring to the attention of the court the existence of the rule to enable the court to extend the rule to a specific date and the date to which the matter stands postponed, otherwise the rule simply lapses.
13. Reliance was placed on [\*Blue Nile Ltd v Lydia Gode Yusuf & Anor \[2018\] eKLR\*](#) & [\*Vine Pack Limited v Milly Glass Works Limited \[2020\] eKLR\*](#).
14. Moreover, the appellant asserted that it was worth noting the conduct of the respondent throughout the proceedings. That after obtaining *ex parte* orders, they never attended court again despite being aware of the dates when the matter came up before the lower court and only showed up to contest the execution of the decree. The respondent's conduct was said to be one with the intention of subverting the court process.
15. It was argued that the learned trial magistrate, in his impugned ruling, did not state how he was misled by the said plaintiff respondent's advocate. From the proceedings of October 5, 2020, the advocate holding brief for the plaintiff's advocate only made an application for warrants of attachment to be reissued. How, then, can that be interpreted to mean that the said advocate misled the court? That the request was made on the basis of a reasonable belief that the *ex parte* orders granted to the respondent had lapsed on July 30, 2020 for failure to have them extended.



16. The appellant averred that the learned trial magistrate appears to have failed to engage himself in a fact-finding mission before granting the prayers sought, and therefore, this failure cannot be visited on the advocate by accusing him of having misled the court into reissuing the warrants of attachment.
17. Lastly, the appellant submitted that the appellants, in executing lawful warrants of attachment, did not act in contempt of court orders.

### **respondent's Submissions**

18. The respondent asserted that the appellants were indeed in contempt of court orders issued on July 16, 2020 as on July 30, 2020, parties did appear before the court and indicated that they were to pursue an out-of-court settlement. Still, at that juncture, the respondent's application had not been dealt with because of the aforementioned developments. As it is, the court orders as pertaining to the application dated July 15, 2020 still stood in force.
19. It was argued that the appellants' act of praying for re-issuance of warrants of attachment on the said motor vehicle was pure malice being visited upon the respondent and that despite the respondent not being in attendance in court on October 5, 2020, the appellants' counsel ought to have reminded the court that there was still a pending application to be heard and determined before anything else.
20. The appellants submitted that once a court order is made in a suit, the same is valid unless set aside on review or on appeal. Reliance was placed on [\*Econet Wireless Kenya Ltd v Minister For Information & Communication of Kenya & Another \[2005\] 1 KLR 828.\*](#)
21. Further, the respondent submitted that anything done in disobedience of court orders is automatically null and void. That the sale of the respondent's motor vehicle had to be declared contemptuous to the extent of its disobedience of the court order of July 16, 2020.
22. In conclusion, the respondent averred that the impugned ruling should be upheld and that the appellants have not made up a case to warrant the grant of the orders sought.

### **Analysis and Determination**

23. The main issue for determination herein is whether the contempt orders granted against the appellant on February 22, 2021 herein were properly issued.
24. In order to succeed on an application for contempt of court, the applicant must satisfy the court of the following:- That the terms of the order (or injunction or undertaking) are clear and unambiguous and are binding on the appellant. That the appellant has knowledge of or proper notice of the terms of the order. The appellant has acted in breach of the order. The appellant's conduct is deliberate.  
(See [\*Samuel M N Mweru & Others v National Land Commission & 2 Others \[2020\] eKLR\*](#))
25. In the instant matter, the court had, on July 16, 2020, issued a temporary order of stay of execution orders pending the hearing and determination of the application dated July 5, 2020. The terms of the order were clear, unambiguous, and binding on the appellant, who had knowledge of or proper notice of the terms of the order. The orders were stated in plain and simple language of what was required of the appellant.
26. Further, both parties appeared in court on July 30, 2020 and indicated that an out-of-court settlement was being explored; however, the negotiations failed.
27. On October 5, 2021, the appellants, through the advocate holding brief, appeared in court and sought to have the warrants of attachment on the respondent's motor vehicle reissued, and the court granted



- the same orders. Notably, the respondent's advocate was not present. All the while, the appellant knew that the orders granted on July 16, 2020 were still in existence and in force; the court had not relinquished the same. In any case, the application dated July 15, 2020 had still not been heard.
28. The appellant then went ahead to sell the respondent's motor vehicle, which action I find to have been in breach leading the respondent to file a further application dated November 2, 2020, and the court, in the impugned ruling dated February 22, 2021, ruled in favour of the respondents declaring that the appellants misled the court and were indeed in contempt of court orders issued on July 15, 2020.
29. The appellants propelled a false and misled narrative through their submissions that their interpretation of the temporary order of stay was to remain in force up to July 30, 2020, when the matter was to be heard inter partes at which instance the trial court was to exercise its discretion in extending the said order either on application by any of the parties, suo moto or by consent. In essence, the said order was meant to and actually lapsed on July 30, 2020 and was then subject to extension by the court or otherwise, but the same did not happen.
30. However, court orders only lapse when the court clearly and expressly vacates them rather than when the parties interpret the same to have happened. The orders were not merely a suggestion to the appellant, but they were simply that an order. The respondent's conduct or failure of the negotiation process did not excuse the appellant's defiance of the court orders issued. It is my opinion that the appellants deliberately misled the court, leading to the issuance of the warrants of attachment, and they were indeed in contempt of court orders, as the court later held on February 22, 2021.
31. As relied on by the respondents in the case of *Econet Wireless Kenya Ltd v Minister For Information Of Kenya & Another [2005] eKLR*, stated that:-
- “It is essential for the maintenance of the rule of law and order that the authority and dignity of our courts are upheld at all time. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibilities to deal firmly with proved contemnors.”
32. Consequently, it is trite law that orders made by a properly constituted court of law must be obeyed. In the case of *Hadkinson v Hadkinson [1952], ALL ER* it was held: -
- “a. “It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.”
33. Finally, in *Teachers Service Commission v Kenya Union Of Teachers & 2 others [2013] eKLR*, the court stated as follows: -
- “a. “The reason why courts will punish for contempt of court then is to safeguard the rule of law, which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed”.



- b. “A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with, and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy, and this court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.”

34. In the circumstances, I am satisfied that this appeal is lacking in merit and dismiss it with costs to the respondent.

**DATED, SIGNED, AND DELIVERED AT NYAHURURU THIS 9<sup>TH</sup> DAY OF FEBRUARY 2023.**

**CHARLES KARIUKI**

**JUDGE**

