



Gituma v Gituma (Civil Case E018 of 2021) [2023] KEHC 1865 (KLR) (16 March 2023) (Ruling)

Neutral citation: [2023] KEHC 1865 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL CASE E018 OF 2021
EM MURIITHI, J
MARCH 16, 2023**

BETWEEN

DAMARIS KAGWIRIA GITUMA PLAINTIFF

AND

ERASTUS GITUMA DEFENDANT

RULING

1. The Court has considered the plaintiff's application for committal to civil jail of the defendant for alleged interference with the ownership and registration of the motor vehicle KBV 500Y, which by order of the court has been given to the plaintiff for her use; refusal to process necessary statutory inspection of the vehicle; and for failure to pay accommodation dues for the Plaintiff's rental as ordered by the Court.
2. The Plaintiff and the Defendant are former spouses, parties whose marriage has been dissolved by an order of the court, and the dispute before the court is for the determination of the suit property as matrimonial property and for their respective rights therein. The orders for provision of accommodation or rental in lieu and for provision of a motor vehicle for the use of the Defendant were made pending the hearing and determination of the property dispute.

Policy of this court in contempt of court

3. The outlook of this court is to encourage compliance with court orders by the parties rather than merely punishing them for their contempt. See a discussion of this in Meru HC JR. No. E006 of 2022, Abdi Gedi Matan V. Principal Secretary, Ministry of Interior & Co-ordination of National Government & 5 ors. of 3/11/2022, as follows:

“ 16. Having found the applicants to have willfully disobeyed the court orders of 4/7/2022, this court agonizes over what sanction it should impose. Would an imprisonment for instance, achieve a desirable outcome?



17. In an Article "Civil Contempt and the Rational Contemnor," by Beres, Linda S. Associate Professor of Law, Loyola Law School of Los Angeles. (1994) Indiana Law Journal: Vol. 69: Iss. 3, Article 3, available at: <https://www.repository.law.indiana.edu/ilj/vol69/iss3/3> the learned author observes that-

“A judge may impose two types of sanctions for refusing to obey a court order. First, the judge may impose civil contempt sanctions to coerce the contemnor into obeying her order. Second, the judge may impose criminal contempt sanctions to punish the contemnor for disobeying her order. If the judge’s goal is to induce compliance, she must give the contemnor an incentive to obey the court order. Civil contempt, therefore, requires imposing an indeterminate or conditional sanction-one that ends if the contemnor complies. Criminal contempt, on the other hand, requires a determinate or unconditional sanction-one that is unaffected by any future actions of the contemnor.... The law regarding sanctions for civil contempt is based on the assumption that the experience of being in jail is likely to coerce an incarcerated civil contemnor; that each day the pressure grows on the jailed contemnor to comply.”

4. This stance is most suited in application for contempt of court especially in matter of personal nature between parties to a matrimonial or matrimonial property dispute.
5. As this court held in Meru HC JR No. E002 of 2020, [*Republic V. County Secretary, County Government of Meru & 3 ors., ex p. Andrew Wachira*](#), on the procedure for application for contempt of court –

“I should consider that section 5 of the [*Judicature Act*](#) remains applicable and in force, as section 38 of the [*Contempt of Court Act*](#), 2016 which attempted to repeal it was declared unconstitutional. See Kenya Human Rights Commission versus Attorney General & Another (2018) eKLR (Chacha Mwita, J.). Otherwise, the Court may never be able to enforce its orders by contempt of court jurisdiction until another substantive law is enacted.”
6. In any event, on applications for disobedience of orders of injunction such as the one for the release of a motor vehicle in this case, the provisions for enforcement under order 40 of the [*Civil Procedure Rules*](#) apply, the repeal or invalidation of the [*Contempt of Court Act*](#) 2016 notwithstanding.
7. The plaintiff charges that the Defendant has, in disobedience of the court, taken a loan facility on mortgage of the motor vehicle and, therefore, interfered with the ownership of the vehicle and further declined to process the vehicle for the necessary inspection for commercial vehicles, thus putting the plaintiff’s possession and use of the vehicle into jeopardy. In addition, it alleged that the defendant has failed to pay the rental dues ordered by the Court in lieu of the provision of accommodation pending the determination of the property dispute.
8. The defendant pleads innocence of contempt of court and ascribes delay in meeting the payment of accommodation dues for the Plaintiff, to his inability due to hard times and competing obligations and offers to liquidate the arrears thereon by payment of Ksh.30,000/- per month, and asserts that the vehicle had been registered in the name of a creditor upon a loan which he has since repaid and the vehicle is now registered in his name, a certificate of search whereof is attached.



9. Without making a final determination of the application for contempt of court, the court finds that the defendant has admitted contempt of court to the extent and in the nature of failure to pay the ksh.30,000/- rental dues as ordered by the court. As regards the registration of the motor vehicle, the court does not find it proved, in view of the explanation by the defendant and the certificate of search adduced, that the Defendant has in contempt of court taken out a loan secured by the motor vehicle subsequent to the order of the court giving the motor vehicle to the use of the Plaintiff. Moreover, no evidence of request and refusal to process, or assistance in processing, the vehicle for necessary inspection at the Government Inspection Unit has been presented, and the court is unable to find contempt in that respect.
10. However, the Court considers the full and expedited hearing and determination of the dispute herein to be in the best interests of both the parties, rather than the bare penal sanction for contempt of court. Significantly, the court has noted that the hearing of the matrimonial property suit is slated for the 30/5/2023, and the dispute herein as regards the rights of the parties in the suit property may shortly be determined.

Orders

11. Accordingly, for the reasons set out above, the Court makes the following orders:
 1. The court shall allow the Defendant to comply with the orders of the court by ensuring that the motor vehicle transport ordered to be provided to the plaintiff is fully operational with necessary inspection certificates, insurance and licences, as applicable; and by maintaining the vehicle registration KBV 500Y in his name pending hearing and determination of the property dispute or until further order of the court.
 2. The Defendant shall take out inspection certificate on the pickup motor vehicle which as a commercial vehicle require Government Inspection to facilitate its use by the Plaintiff.
 3. The defendant shall pay monthly accommodation dues at Ksh.30,000/- as ordered.
 4. The defendant shall liquidate the arrears of the accommodation dues to be ascertained by Counsel for the parties, at the rate of 10,000/- per month.
 5. Consequently, the Defendant shall pay the sum of Ksh.40,000/- per month until the arrears of the accommodation dues are fully realized and thereafter Ksh.30,000/ only for the monthly accommodation dues until the determination of the property dispute herein.
12. Hearing confirmed for 30/5/2023 as scheduled.
Order accordingly.

DATED AND DELIVERED ON THIS 16TH DAY OF MARCH, 2023.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Thangicia, Advocate for the Plaintiff.

Mr. Ngéntu, Advocate for the Defendant.

