



REPUBLIC OF KENYA



**Mwalimu National Sacco (MNS) v Kin'goori (Civil Appeal
E027 of 2020) [2023] KEHC 2495 (KLR) (23 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2495 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E027 OF 2020
TW CHERERE, J
MARCH 23, 2023**

BETWEEN

MWALIMU NATIONAL SACCO (MNS) APPELLANT

AND

JAMES KAIGONGI KIN'GOORI RESPONDENT

JUDGMENT

Background

1. On November 22, 2016, Respondent was astounded when he received a Standard Credit Report that he had been listed on Credit Reference Bureau as a defaulter of KES 16,203.60 yet he had cleared the outstanding loan way back in 2008.
2. He pleaded that the mistaken listing had caused him great harm and had been unable to get any credit facility. He prayed for delisting, an apology and general damages.
3. Appellant denied Respondent's claim and stated that the listing was justified on account of Respondent having been indebted to the Appellant sometimes in 2017.
4. By a judgment dated September 10, 2019, the trial magistrate found respondent's case proved and directed that he be delisted from the database of defaulters and in addition be paid damages in the sum of KES 400,000/-, costs of the suit and interest.
5. Subsequently by an application dated August 14, 2020, respondent applied to cite appellants for contempt for failure to delist him from the database of defaulters. Appellant on the other hand filed application dated August 31, 2020 seeking that the judgment be set aside and respondent be directed to refund the decretal sum on the ground that the listing complained of was ordered by Co-operative Bank and not the appellant.



6. By a ruling dated November 24, 2020, the learned trial magistrate disallowed appellant's application to set aside the judgment and to order respondent to refund the decretal sum, ruled that the issue that respondent was listed by Co-operative Bank was not new, had been adjudicated and the court could not sit on appeal in its own judgment.
7. By a ruling dated December 1, 2020, the learned trial magistrate allowed respondent's application and directed that the appellant's CEO attend court on December 8, 2020 to show cause why he could not be committed to civil jail for disobeying the order to delist respondent from the database of defaulters.

The Appeal

8. Dissatisfied with the foregoing two rulings, appellant filed this appeal vide a memorandum of appeal dated December 3, 2020.

Analysis and determination

9. I have considered the evidence on record together with the submissions filed on behalf of the appellant and the cited authorities.
10. My duty as an appellate court is to be found in section 78 of the [Civil Procedure Act](#) which requires that I evaluate and consider the evidence and the law, and exercise as nearly as may be the powers and duties of the court of original jurisdiction and come to my own conclusion. In doing so, I have a duty to give an allowance of the fact that I neither saw nor heard the witnesses as they testified. See [Selle v Associated Motor Boat Co](#) [1968] EA 123.
11. In the case of [Shimmers Plaza Limited v National Bank of Kenya Limited](#) [2015] eKLR, the Court of Appeal faced with a case of disobedience of court orders stated as follows:

“We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a court order or not, for as Theodore Roosevelt, the 26th President of the United States of America once said;

“No man is above the law and no man is below it; nor do we ask any man's permission to obey it. Obedience to the law is demanded as a right; not as a favour.”
12. In this case, appellant had on September 10, 2019 been directed to delist respondent from the database of defaulters within 21 days. As at August 14, 2020 close to a year from the date of the order, appellant had not complied with the court order.
13. Clearly, the trial court could not fold its hands in helplessness and watch as its orders were disobeyed with impunity left, right and center for that would amount to abdication of the sacrosanct duty bestowed on it by the [Constitution](#). The court in issuing the notice to show cause to appellant's CEO acted lawfully to protect its dignity, and authority to set in motion the process of punishing the Respondent for disobeying its orders. On this issue, I think the learned needs to be commended and not castigated.
14. Concerning the dismissal of appellant's application to set aside the judgment and to order respondent to refund the decretal sum on the ground that respondent's listing was made by Co-operative Bank,



I find that the learned trial magistrate correctly rendered himself that having adjudicated the matter, the appellant's remedy lay with an appeal.

15. For the reasons given hereinabove, I find that the appeal has no merit and it is dismissed with costs to the respondent.

DATED AT MERU THIS 23RD DAY OF MARCH 2023

WAMAE TW CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Appellant - N/A for Kithinji Kirigiah & Co. Advocates

For Respondent - Ms. Kinyanjui for Mbaabu M'Inoti & Co Advocates

