



**Munga v Obuon & another (Civil Appeal E001 of 2023)
[2023] KEHC 18796 (KLR) (Civ) (15 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18796 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL APPEAL E001 OF 2023
AN ONGERI, J
JUNE 15, 2023**

BETWEEN

SAMUEL HIUHU MUNGA APPELLANT

AND

DUNCUN OCHIENG OBUON 1ST RESPONDENT

RISEN COMPANY LTD 2ND RESPONDENT

(Arising from the Small Claims Court in SCCOMM E821 of 2021)

RULING

1. The application coming for consideration in this ruling is the one dated May 10, 2023 seeking for orders that the appellant be punished for contempt of court for disobeying the orders issued by the Small Claims Court in SCCOMM E821 of 2021.
2. The appellant was ordered to pay the respondent kshs.105,407 before the respondent would remove the caveat placed at the NTSA portal for registration of motor vehicle registration No KCB 266Y within 3 days upon making the payment and failure to which the NTSA were to effect the same.
3. The application is supported by the affidavit of Dancan Ochieng Obuon sworn on 16/5/2023 in which it is deponed that the appellant in total disregard of the court orders illegally accessed the NTSA portal and transferred the motor vehicle without making the payment.
4. The appellant filed a replying affidavit dated May 12, 2023 in which he stated that the dispute herein filed before the small claims court in Nairobi SCCOM E821 of 2021 arose from the agreement for sale and transfer of moto vehicle KCB 266Y where the payment of the balance of the purchase price was disputed by the 1st respondent leading to his registration of the caveat against prohibiting his transfer of the said vehicle.



5. That the dispute before the small claims court was access to the vehicle's NTSA portal and lifting of the caveat placed on it by the respondent. The respondent has not filed any evidence to support the alleged sale of the motor vehicle and the movement of the vehicle from Risen Company Limited to Gabaki Multipurpose Sacco and later to Zuri Genesis Company is for the purposes of running the PSV business for which the vehicle is licensed and is not evidence of sale or transfer of the vehicle to the entities.
6. He filed the present appeal against the judgement of the trial court and this court issued a temporary order for stay of execution upon deposit of the decretal sum which order has been complied with.
7. That therefore in the circumstances the issue of contempt of court cannot legally arise since the execution of judgment was stayed and the actions complained by the 1st respondent were allegedly effected between April and August 2022 long before the proceedings before the small claims court were concluded and the facts were not brought before the court for determination.
8. That it is only upon the determination of the appeal and the applications that the 1st respondent can proceed with execution of the decree or contempt proceedings as there is no order issued by this court which has been breached to warrant the present application by the 1st respondent.
9. The parties filed written submissions as follows; The applicant in his submissions argued that it was clear from the Judgments of July 6, 2022 and December 16, 2022, that the caveat still existed within the NTSA portal yet the appellant/respondent had already removed it despite the existence of a court order restraining the removal until when payment is done by the appellant/respondent, and Orders which was duly issued by the Trial and Re-Trial Small claims court, and so the appellant/respondent should now be jailed for contempt, because the appellant/respondent procured the NTSA logins fraudulently which should now be reversed.
10. The applicant argued that appellant/respondent has not provided any proof to this court, of any substantial reason as to why contempt application should not sail through. Since contempt application has advanced reasonable grounds and legally accepted legal threshold to warrant the grant of the orders sought in contempt application herein, and so his replying affidavit on the same should be dismissed with costs and interests to the respondents.
11. It was argued that is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove;
 - (i) The Terms of the Order,
 - (ii) Knowledge of these Terms by the Respondent,
 - (iii) Failure by the Respondent to comply with the Terms of the Order.
12. That all these 3 requirements have been met by the 1st respondent/applicant's contempt application since the appellant/respondent herein expressly knew of court's directions since exparte chamber summons of 8th December 2021 till final judgment of December 16, 2022, and should have not illegally accessed the NTSA portal on April 14, 2022 and unprocedurally register the said motor vehicle KCB 266Y to another PSV Sacco by the name Ganaki PSV Sacco then Zuri PSV Sacco thereby effecting transfers without valid court Orders allowing him to act as such, and since inception of his suit when the said motor vehicle was in the portal of 2nd respondent Risen PSV Sacco, and should be now held liable for contempt.



13. The applicant/respondent added that he stands to suffer irreparable losses and damages if the application herein is not allowed and the orders sought are not granted as the applicant/1st respondent shall have lost all his legal rights as pertains to justice and particularly on an already closed matter.
14. The appellant/respondent submitted that the subject motor vehicle has not been transferred to a third party, therefore there has been no sale and the movement of the vehicle from Risen Company Limited to Ganaki Multipurpose Sacco and later to Zuri Genesis Company is for purposes of running the PSV business for which the vehicle is licensed.
15. That the Applicant/Respondent has annexed a current Copy of Records from NTSA for motor vehicle KCB 266Y which indicates the Appellant as the current owner of the motor vehicle, which evidence has not been rebutted. The subject motor vehicle is currently owned by the appellant and the issue of contempt of court cannot legally or factually arise.
16. That a bona fide Contempt of Court threshold has not been met at all, it is an established principle of law that [See the High Court of South Africa in the case of *Kristen Carla Burchell v Barry Grant Burchell*, Eastern Cape Division Case No 364 of 2005] to succeed in civil contempt proceedings, the applicant has to prove:
 - (i) the terms of the order,
 - (ii) Knowledge of these terms by the Respondent,
 - (iii) Failure by the Respondent to comply with the terms of the order.
17. The sole issue for determination in this case is whether the appellant to be committed to civil jail for failure to comply with a court order requiring him to pay kshs.105,407 to the 1st respondent before transferring the motor vehicle.
18. The appellant denied that he illegally accessed the NTSA portal. He said he deposited the decretal sum in court as a condition for grant of stay of prosecution.
- 19) I find that the decretal sum was deposited in court pursuant to an order made on January 4, 2023.
20. I find that the 1st respondent has not availed evidence to show how the transfer was done and therefore it has not been proved that it was the Appellant who transferred the motor vehicle and the date the same was effected.
21. Since the decretal sum was deposited as a condition for grant of stay of execution pending appeal, the appropriate thing to do is to expedite this appeal so that this case is disposed of.
22. The Application dated May 10, 2023 is accordingly dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 15TH DAY OF JUNE, 2023.

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A. N. ONGERI

JUDGE

In the presence of:

.....for the Appellant

.....for the Respondent



.....for the Interested Party

