



**Royal Associates Insurance Brokers Limited v Mua Insurance (Kenya) Limited  
(Successor in Title of Saham Assurance Co Ltd) (Commercial Case E854 of 2021)  
[2024] KEHC 13784 (KLR) (Commercial and Tax) (4 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13784 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E854 OF 2021  
JWW MONG'ARE, J  
NOVEMBER 4, 2024**

**BETWEEN**

**ROYAL ASSOCIATES INSURANCE BROKERS LIMITED ..... APPLICANT**

**AND**

**MUA INSURANCE (KENYA) LIMITED (SUCCESSOR IN TITLE OF SAHAM  
ASSURANCE CO LTD) ..... RESPONDENT**

**RULING**

1. The Applicant, Royal Associates Insurance Brokers Limited, by a Notice of Motion dated 1<sup>st</sup> November 2021 has moved this court for the following orders:
  - i. spent
  - ii. A notice to issue on Samson Ndegwa, Lydia Kibaara, Driss Benchaffai Raj L. Pandit, Dhruv Pandit, Charles Nyachae, Mohammed Afifi, Dorothy Angote and Monica Kerrets to show cause why contempt of court proceedings should not be commenced against them.
  - iii. A declaration that Samson Ndegwa, Lydia Kibaara, Driss Benchaffai Raj L. Pandit, Dhruv Pandit, Charles Nyachae, Mohammed Afifi, Dorothy Angote and Monica Kerrets are guilty of contempt of court orders.
  - iv. An order that Samson Ndegwa, Lydia Kibaara, Driss Benchaffai Raj L. Pandit, Dhruv Pandit, Charles Nyachae, Mohammed Afifi, Dorothy Angote and Monica Kerrets be committed to civil jail for a term not exceeding six months or for such a period as the court shall deem fit for disobedience of the court orders of 14<sup>th</sup> October 2021.



- v. The Defendant be restrained from filing any pleadings documents and or taking any further/ other proceedings in this matter until it purges its contempt.
  - vi. The OCPD and OCS Central Police Station be directed to provide the Plaintiff with the necessary security in realizing the orders of this court.
2. The Application is brought under Section 5(1) of the *Judicature Act*, Chapter 8 of the Laws of Kenya, Sections 3, 3A and 63 (e) of the *Civil Procedure Act*, Order 51 Rule 1 of the *Civil Procedure Rules* and all other enabling provisions of the law. The Application is premised on the grounds that the court by an application dated 6<sup>th</sup> October, 2021 on 14<sup>th</sup> October 2021 issued a status quo order in respect of the insurance policies issued by the Defendant pending the hearing of the application. In blatant breach of the court orders the Defendant issued the Plaintiff with a cancellation notice which was to take effect on 14<sup>th</sup> October, 2021 and refused to provide coverage for the motor vehicle with the claim.
  3. The Application is further supported by an affidavit sworn by Paul Nguta Kaema, the Group Managing Director and Chief Executive Officer of the Applicant. Who stated that as a result of the blatant breach and ignorance he was forced to incur extra costs when Motor Vehicle KCW 044F was stopped at a routine traffic check and was charged for using a motor vehicle without a certificate on 30<sup>th</sup> October, 2021.
  4. In opposing the application, the Respondent, through its Manager of Legal Affairs, Sarah Weru, swore the affidavit dated 18<sup>th</sup> November, 2021. She avers the citation of Mohammed Affi, Monicah Kerrets, Raj L. Pandit and Dhruv Pandit in the contempt proceeding is misplaced as they resigned from the Directorship of Saham Assurance Company on 3<sup>rd</sup> July 2020 and a notice of cessation of office lodged with the Registrar of Companies on 17<sup>th</sup> July 2020. That the orders sought cannot therefore be issued to former directors of the company. It was also argued that the status quo orders were issued after the cancellations of the subject policies took effect on 13<sup>th</sup> October 2021 and not before and therefore the issue of contempt did not arise or at all.
  5. The application was canvassed by way of written submissions with the Applicant's written submissions filed on 25<sup>th</sup> January 2022 while the Respondent's submissions were filed on 11<sup>th</sup> March 2022.

### **Analysis and Determination**

6. I have carefully considered the application, the affidavits and rival written submissions by the parties. To my mind, the only issue that arises for determination by the court is “whether the cited directors of the Defendant Company are in contempt of court.”
7. It is trite law that to cite a person for contempt of court, one must establish that the person was aware of the relevant court orders and with that knowledge wilfully disobeyed the said court orders. Courts punish for contempt of court in order to safeguard the rule of law. This was established in the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 others* [2013] eKLR where the court observed that:-

“ 38. 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.”



8. In addition to the above cited decision, I must remind myself that the standard of proof required to cite a person for contempt is higher than that of a balance of probability as held in the case of Mutitika v Babarini Farm Limited [1985] KLR 229, 234 where the court held that:

“... the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature.”

9. According to the Applicant at the time the court issued the status quo orders the policies were in force as the cancellation notices had not been served on the respective insured. Counsel submitted that the Respondent was in breach of the court orders as the orders were served on the Respondent and thus had the knowledge of the orders but was in blatant breach of the said orders.

10. In opposition thereto the Respondent submitted that the impugned order of status quo was not precise, it contained ambiguity as it was contradictory. Furthermore, it was stated that at the time of issuing the status quo order the cancellation notices had taken effect on 13<sup>th</sup> October 2021. Thus, the orders were to maintain the status obtaining at the time the order was issued and not before the date of issuing such orders. Counsel argues that to halt the cancellation notices the court ought to have issued status quo ante orders instead of the status quo orders.

11. In this matter, I note that the court's orders of 14<sup>th</sup> October 2021 explicitly maintained the status quo as the Respondent was not to interfere with the policies issued to the insured. For the court to satisfy itself whether there was contempt, the first question to determine is whether the alleged contemnors were aware of the said orders.

12. The Applicant submitted that the impugned court orders issued on 14<sup>th</sup> October 2021 were served on the Respondent on the 15<sup>th</sup> of October 2021, but did not provide any evidence to prove that the alleged contemnors were served with the court orders. At this point, the court is required to satisfy itself that the alleged contemnors had the knowledge of the orders issued on 14<sup>th</sup> October 2021. The law on contempt proceedings has evolved and it has been held that knowledge supersedes personal service as it was held in the case of Basil Criticos v Attorney General and 8 Others [2012] eKLR where the court stated that:-

“...the law has changed and as it stands today knowledge supersedes personal service.....where a party clearly acts and shows that he had knowledge of a Court Order, the strict requirement that personal service must be proved is rendered unnecessary”

13. Similarly, in Nyamogo & another v Kenya Posts and Telecommunications (1999-194) EA at 464 it was expressed that service of a Court order on the company does not constitute service on the directors and personal service on each officer is required to be affected by law.

14. To hold the directors of such a company personally liable for breach of an order, such directors should be served with the order or it must be shown that they had personal knowledge of the same. In the instant case, it has not been shown that the alleged contemnors were served or had the knowledge of the court orders issuing the status quo.

15. The second issue I will address is what deliberate and intentional non-compliance of the court order was carried out by each alleged contemnor. From the record, the applicant was served with the impugned cancellation notices on 14<sup>th</sup> September, 2021 which means it would take effect after 30 days and as a result, the policy cancellation took effect on 14<sup>th</sup> October 2021. The Court ruling of



14<sup>th</sup> October 2021 was served upon the respondent on 15<sup>th</sup> October 2021. The Applicant has not demonstrated what acts were undertaken by the alleged contemnor which amounted to violation of the court orders.

16. Further, the Respondent contends that the Applicant failed to appreciate that a company is a separate legal entity with its directors, and failed to follow the due process to pierce the corporate veil and bind the actions of the Company as being those of the directors' in order to maintain the application for contempt. The alleged cited contemnors are directors and former directors of a Company, they are not parties to the suit. it is trite law that a company is personally liable for its actions and has a separate legal entity from that of its directors In *Katsuri Limited v Kapurchand Depar Shah* [2016] eKLR, the court in considering contempt by a director of a company observed that:

“The alleged contemnor is a director of the company. He is not a party to these proceedings in his personal capacity. The company is a legal entity. The proper procedure for the applicant was first to apply to lift the corporate veil then go for the directors in their personal capacities.”

17. From the foregoing, the failure of the Applicant in lifting the veil of the Respondent denied it a chance to cite the cited contemnors for contempt of court. In the circumstances, I find that the applicants have failed to provide proof of alleged willful and deliberate disobedience of the court orders to the required standard.
18. In sum, it is therefore my finding that at the time of effecting service to the company, the cancellation orders had already taken effect and as such maintaining the status quo at this point, as I may understand it, meant that the policies had already been cancelled and would remain cancelled. I am inclined to agree with the Respondent that the Applicant ought to have sought status quo ante orders which would have meant a return to the position prior to the court order or the cancellation of the policy. Therefore, I find there is no evidence of deliberate and wilful neglect and or disobedience of the court orders by the alleged contemnors to warrant this court find them in contempt as is being sought by the Applicant.
19. The upshot of the above finding is that this court finds and holds that the Applicant's application dated 1<sup>st</sup> November 2021 is without merit and the same is dismissed with costs to the Defendant.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY at NAIROBI this 4<sup>TH</sup> DAY OF NOVEMBER 2024**

.....

**J.W.W. MONG'ARE**

**JUDGE**

**In the Presence of:-**

1. Mr. Alwang'a holding brief for Mr. Karanja for the Defendant.
2. N/A for the Plaintiff.
3. Amos - Court Assistant

