



**Govindaraj v Ulaganathan & another (Petition E016 of 2023)
[2024] KEHC 15747 (KLR) (Commercial and Tax) (6 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15747 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
PETITION E016 OF 2023
FG MUGAMBI, J
DECEMBER 6, 2024**

BETWEEN

YUVARAJ GOVINDARAJ PETITIONER

AND

VISHNU VARDHAN ULAGANATHAN 1ST RESPONDENT

GV WATER DRILLING LIMITED 2ND RESPONDENT

RULING

Background and Introduction

1. For determination is the application dated 15th August 2024, filed by the respondents (the applicants herein), seeking a number of orders. In summary, the applicants seek to have the petitioner cited for contempt of the court orders issued by this court on 20th December 2023.
2. There are injunctive prayers to restrain the petitioner from dealing with the shares in respect of the 2nd applicant handling the 2nd applicant's monies held at Diamond Trust Bank (South C branch) and 1&M Bank (Gateway Mall branch) and from contracting or transacting in the 2nd applicant's name without the 1st applicant's consent.
3. The 1st applicant seeks to have the petitioner ordered to deliver the motor vehicles registration numbers KCH 491N and KAM 142M (the motor vehicles) to Milimani Law Courts for preservation until the case is heard and determined as well as an order directing the petitioner to deposit his passport in court.
4. The application is supported by the affidavit of Vishnu Vardhan Ulaganathan, the 1st applicant and director of the 2nd applicant sworn on 15th August 2024. It is opposed by the petitioner through the replying affidavit of Yuvaraj Govindaraj, sworn on 10th October 2024. Parties filed their written



submissions which I have also considered and reviewed the evidence and authorities cited. I will now consider the issues raised in the application under separate headings.

Analysis and determination

5. Regarding the prayer for committal to civil jail of the petitioner, the applicants contend that a consent order was issued by this court on 20th December 2023. The order outlined the terms under which the petitioner and the 1st applicant would operate the 2nd applicant's motor vehicles. The 1st applicant contends that the petitioner has failed to comply with the terms of the order, operating the vehicles exclusively for his own benefit and excluding the 1st applicant from any involvement or revenue sharing arising from the operations. This breach includes the deactivation of the tracking devices in the motor vehicles, further exacerbating the issue.
6. The petitioner challenges the validity of the consent agreement, asserting that it was entered into involuntarily. He claims that he did not understand or agree to the said terms and that he did not instruct his previous counsel to execute the same. He therefore blames his counsel for taking advantage of their language barrier and suggests that the consent was executed without his free will or proper authorization.
7. There is extensive judicial pronouncement on the objective of contempt proceedings including the need for maintenance of the rule of law and order and upholding the authority and the dignity of our courts. This was reiterated in *Econet Wireless Kenya Limited v Minister for Information and Communication of Kenya Authority*, [2005] eKLR as follows:

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the 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 the order believes it to be irregular or void.”
8. To successfully establish a case of contempt, an applicant must prove that the orders of the court were clear and unambiguous, that the applicant had knowledge of the court orders and that there was willful and deliberate disobedience of the court orders. (See *Oilfield Movers Limited V Zabara Oil & Gas Limited*, [2020] eKLR).
9. The court record shows that on 20th December 2023, when the consent was recorded, the petitioner was represented by counsel Ms. Washika, while Mr. Kinuthia appeared for the applicants. The consent elaborated how the subject motor vehicles would be handled and the operation of the 2nd applicant's accounts, pending the hearing and determination of the petition before the court.
10. In summary, the consent outlined that the motor vehicles were to be kept at the 2nd applicant's premises and were to be utilized jointly by the petitioner and the 1st applicant. Furthermore, any income generated from the operation of the motor vehicles was to be deposited into a joint interest-bearing account, with any withdrawals requiring authorization by both the petitioner and the 1st applicant. Additionally, the consent explicitly required that the tracking devices in the motor vehicles be activated at all times.



11. It is not in dispute that the petitioner was aware of the consent order. The petitioner has however not stated what exactly was not clear from the consent or what he did not agree to. I note that through an application dated 8th January 2024 he sought to review the consent but on totally different grounds. He did not raise the issue of unenforceability or illegality of the consent. Instead, prayer 3 of the said application states in part that: there is new evidence that was not disclosed to court, and seeks leave that the said evidence be admitted, praying that there was a mistake on the presentation of facts due to an oversight.
12. I further note that the parties appeared before the Hon Deputy Registrar on 19th January 2024 and before this court on 30th January 2024, and sought to withdraw the petition, on the ground that the parties were negotiating. Again, even at this point there was no indication that the petitioner had not understood the effect of the consent orders of 20th December 2023. I am therefore convinced that the reasons that are now being advanced by the petitioner are an afterthought.
13. It is well established that an advocate has the authority to enter into a consent agreement on behalf of their client. This authority is derived from the advocate-client relationship, which grants the advocate the power to act in the best interests of the client, including entering into legally binding agreements such as consents.
14. Consequently, consent given through an advocate is generally assumed to be binding unless it is specifically challenged or proven to have been entered into without proper authorization. See [*Kenya Commercial Bank Ltd V Specialised Engineering Co Ltd*](#), [1982] KLR 485, where the court opined that:

“A duly instructed advocate has an implied general authority to compromise and settle the action and the client cannot avail himself of any limitation by him of the implied authority to his advocate unless such limitation was brought to the notice of the other side.”
15. Further, the Court of Appeal case in [*Intercountries Importers and Exporters Limited v Teleposta Pension Scheme Registered Trustees & 5 Others*](#), [2019] eKLR, held that;

“Essentially, the above cited authorities are clear that a consent Order will only be set aside if it can be demonstrated that it was procured through fraud, non-disclosure of material facts or mistake or for a reason which would enable a court set it aside. ...”
16. Against the backdrop of these judicial pronouncements I therefore find that the consent is valid and it is binding on the parties. I would only add that it is the parties who understand their circumstances and nothing stops them from consenting to review the consent in a way that works for them.
17. Finally, before a finding of contempt can be made, there must be a demonstration of willful and deliberate disobedience of a court order. In the [*Intercountries Importers and Exporters Limited*](#) case (*supra*), the court stated:

“It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or motive of the existence of the order of the court forbidding it. The threshold is quite high as it involves possible deprivation of a person’s liberty. ...”
18. Unfortunately, none of the claims made by the 1st applicant regarding the management of the 2nd applicant’s accounts or the use of the motor vehicles has been substantiated. The burden of proof



rested on the applicants to demonstrate that the petitioner acted in violation of the consent order and to provide supporting evidence. In the absence of such proof, the allegation of contempt cannot stand.

19. The prayers in the application seeking the preservation of the motor vehicles as well as management of the accounts are covered in the consent. I have already stated that the consent remains binding on the parties. That being the case, the terms in that consent are applicable and the prayer cannot therefore stand. The applicants also seek an order for the petitioner to deposit his passport in court. They have not however demonstrated that the petitioner is a flight risk and the prayer for the depositing of the passport therefore fails.
20. Regarding the prayer sought to bar the petitioner from dealing with the shares in the 2nd applicant, the petitioner has attached a CR9 form which is a Notice of Cessation of Office of Directors with respect to the 1st applicant. The said notice follows a Board resolution of 30th October 2023. While it is on the face of it clear that the 1st applicant is no longer a director of the 2nd applicant, there is no evidence of the transfer of his shares. In order to preserve the substratum of this suit, as far as the shares go, I am of the view that the injunction should be allowed.

Disposition

21. Accordingly, the application dated 15th August, 2024 is allowed only to the extent of prayer No. 12, which seeks injunctive relief to restrain any dealings with the shares of the 2nd applicant pending the hearing and determination of the petition herein. All other prayers are dismissed. Each party shall bear their own costs.

DATED, SIGNED AND DELIVERED IN NAIROBI* THIS 6TH DAY OF DECEMBER 2024.

F. MUGAMBI

JUDGE

