



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**MISC. CIVIL APPLICATION NO. E122 OF 2021**

**BETWEEN**

**DIRECTLINE ASSURANCE COMPANY LIMITED..... APPLICANT**

**VERSUS**

**MERCY NYAMBURA WANGUI (suing as the Legal Representative of the estate of**

**BRYAN NJOROGE NYAMBURA.....RESPONDENT**

**RULING**

1. **DIRECTLINE ASSURANCE CO. LTD** (herein after **Directline**) has filed a Notice of Motion dated 11<sup>th</sup> June, 2021 and the prayers that subsist and are before me for consideration of that application are as follows:-

*THAT the honourable court be pleased to issue the following orders against the respondent for deliberately defying and disobeying the court orders issued by the honourable court on 31<sup>st</sup> may, 2021.*

- a) *The respondents be fined such sums of money as this honourable Court may direct and that the same be paid into court forthwith.*
- b) *Property belonging to the respondent be attached to the extent of such value as this honourable court may direct and*
- c) *The respondents be committed to and/or detained in prison for a term of six (6) months.*

**BACKGROUND**

2. **Mercy Nyambura Wangui** (hereinafter **Mercy**) the respondent filed a declaratory suit against Directline before the Kiambu Chief Magistrate's Court. **Mercy** Applied for the striking out of the defence of Directline in that case. By a Ruling dated 20<sup>th</sup> April, 2021 the Chief Magistrate found the said defence to be a sham and an abuse of the court process and proceeded to strike out that defence and entered judgment for **Mercy**. Directline filed before this Court a Notice of Motion application dated 28<sup>th</sup> May, 2021 whereby it sought stay of execution of that judgment by the Chief Magistrate, and also sought leave to file an appeal against that Ruling of the Chief Magistrate out of time.

3. That application was placed before me on 31<sup>st</sup> May, 2021 and I granted the following orders:-

**“ORDER**

**UPON READING an application brought under certificate of urgency AND UPON FURTHER READING of the affidavit of Pauline Waruhiu Nyambura sworn at Nairobi on 28<sup>th</sup> May, 2021 in support thereof and the annexures thereto:-**

**IT IS HEREBY ORDERED THAT:**

**1. There shall be interim stay of execution of against the judgment and decree issued on 20<sup>th</sup> April, 2021 in Kiambu CMCC No. 45 of 2020 MERCY NYAMBURA WANGUI (suing as the legal representative of the ESTATE OF BRYAN NJOROGE NYAMBURA) VS. DIRECTLINE ASSURANCE COMPANY LIMITED on Condition the applicant does deposit Kshs.1million (one million) into**

court.

**2. The application shall be fixed for inter partes hearing at the registry.”**

4. *Directline* filed the application of Notice of Motion dated 11<sup>th</sup> June, 2021, which is under consideration by the Ruling. The application was placed before me on 14<sup>th</sup> June, 2021 and the following orders were issued thereof:-

**IT IS HEREBY ORDERED:-**

1. *THAT for avoidance of doubt there shall be stay of execution until further orders of this Court in Kiambu CMCC 45 of 2020.*

2. *THAT the respondents, their servants and or agents of whosoever are hereby restrained from selling the applicants attached good.*

3. *THAT the respondents, their servant and or agents or whosoever is in possession of the applicant’s goods are hereby ordered unconditionally and forthwith release/restore the same to the applicant.*

4. *THAT the Notice of Motion dated 11<sup>th</sup> June, 2021 shall be heard inter partes on 21<sup>st</sup> June, 2021.*

5. It is the above orders that *Directline* alleges were disobeyed by Mercy, her advocate *John Njuguna Kamau* and *Mbuseri Auctioneers* and hence now *Directline* seeks for orders reproduced above, that is for the finding that the aforesaid persons and entity are in contempt of court.

**ANALYSIS**

6. There is always an obligation to obey court orders. This was distinctively restated by the Court of appeal in the case **WOBURN ESTATE LIMITED VS. MARGARET BASHFORTH (2016)** thus:-

**“See REFRIGERATION AND KITCHEN UTENSILS LTD Vs. GULABCHAND POPATLAL SHAH & ANOTHER, Civil Application No.39 of 1990, where it was observed.**

**‘A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it.... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid-whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question... he should apply to the court that it might be discharged. As long as it exists it must not be disobeyed.’”**

7. In the above case, the Court of Appeal reiterated that contempt proceedings being quasi criminal in nature and because a person can lose his right to liberty, each stage of the procedure must be scrupulously followed and observed. The Court of Appeal in so reiterating cited the case **RE BRAMBLEVALE (1970) 1 CH 128** as follows:-

**“A contempt of court is an offence of criminal character. A man may be sent to prison for it. It must be satisfactorily proved showing that when the man was asked about it, he told lies. There must be some further evidence to incriminate him.”**

8. This Court issued a conditional order of stay of execution on 31<sup>st</sup> May, 2021. In other words, interim stay of execution was conditional on *Directline* depositing into court Kshs. 1million.

9. Although *Directline* attached a non-legible banking slip, I can however see a bank stamp on it reflecting the date 10<sup>th</sup> June, 2021. I cannot see a court receipt, in the court file, proving that such payment was received by the court. I am however willing to accept that *Directline* has indeed deposited the amount ordered on 31<sup>st</sup> May, 2021, that is Kshs. 1million. That payment it would seem from *Directline*’s own Banking slip was made on 10<sup>th</sup> June, 2021. If that is so, and I can find no contrary evidence, the condition for stay of execution was fulfilled on that day, 10<sup>th</sup> June, 2021. Contempt of the court order of 31<sup>st</sup> May, 2021 could only have occurred on or after 10<sup>th</sup> June, 2021. The attachment of *Directline*’s moveable goods by *Mbuseri Auctioneers* was on 2<sup>nd</sup> June, 2021. I am unable to find that Mercy or the other cited parties are in contempt of the order of 31<sup>st</sup> May, 2021 because *Directline* had failed to honour the condition of stay of execution by the date when the attachment was effected. There is no proof of contempt of court order.

10. Courts do not take contempt of court orders lightly. That is what the Court of Appeal stated in the case **ROSE NAJUNA WANYAMA VS. NUSRA NASUBU CHIBANGA & ANOTHER (2019) eKLR**. In that case however, the Court also stated thus:-

**“In the case MICHEAL SISTU MWAURA KAMAU V DIRECTOR OF PUBLIC PROSECUTIONS & 4 OTHERS [2018] eKLR this Court stated:-**

**‘It is trite that to commit a person for contempt of court, the court must be satisfied that he has willfully (sic) and deliberately disobeyed a court order that he was aware of. That is made absolutely clear by section 4 of the Contempt of Court Act and the ruling of the Supreme Court in REPUBLIC V. AHMAD ABOLFATHI MOHAMMED & ANOTHER (supra). Secondly, as this Court emphasized in JIHAN FREIGHTERS LTD V. HARDWARE & GENERAL STORES LTD AND IN A.B. & ANOTHER V. R. B. [2016] eKLR, to sustain committal for contempt of court, the order of the**

***court that is alleged to have been deliberately disobeyed must be clear and precise so as to leave no doubt as to what a party was supposed to do or to refrain from doing.”***

11. Before concluding this Ruling, I wish to state that it highly irregular for an applicant to bring in parties not parties in the original cause, and seek to obtain orders against such parties without the leave of the court. That is what *Directline* did here. *Directline* unilaterally joined *John Njuguna Kamau Advocate* and *Mbuseri Auctioneers*. Even if this Court had found there was contempt of a court order, the court would not make orders against non-parties to an action where the joining of such non-parties was not sanctioned by the court.

12. The second matter I wish to bring to attention is that *Directline* since May, 2021 are enjoying stay orders while pursuing what I can only term as ill-fated contempt application. It will follow that since the initial application for stay of execution dated 25<sup>th</sup> January, 2021 is fixed for haring *inter partes* on 19<sup>th</sup> October, 2021, the stay of execution orders will be ordered to subsist up and until that date.

13. The third matter I wish to address is that, since I have found there was no contempt of court order when the execution took place on 2<sup>nd</sup> June, 2021, it follows that the *Mbuseri Auctioneers* fee for that execution shall and are hereby ordered to be paid by *Directline*.

#### **DISPOSITION**

14. In the end, I am satisfied that *Mercy Nyambura Wangui*, *John Njuguna Kamau* and *Mbuseri Auctioneers* are not in contempt of the court order dated 31<sup>st</sup> May, 2021. Therefore, I make the following orders:-

(a) The Notice of Motion applications dated 11<sup>th</sup> June, is dismissed and the costs thereof are awarded to **Mercy Nyambura Wangui, John Njuguna Kamau and Mbuseri Auctioneers.**

(b) **Directline Assurance Company Limited** shall pay within 30 days from today Auctioneers' fees for Mbuseri Auctioneers in respect of the attachment in respect to Kiambu CMCC No. 45 of 2020 carried out on 2<sup>nd</sup> June, 2021.

(c) The stay of execution of Kiambu CMCC No. 45 of 2020 shall subsist up and until 19<sup>th</sup> October, 2021.

**RULING DATED AND DELIVERED AT KIAMBU THIS 5TH DAY OF OCTOBER, 2021.**

**MARY KASANGO**

**JUDGE**

**CORAM:**

**COURT ASSISTANT : NDEGE**

**FOR THE APPLICANT: MISS GULENYA**

**FOR THE RESPONDENTS : MS. WANJIRU HOLDING BRIEF FOR MR. NJUGUNA**

**COURT**

**RULING DELIVERED VIRTUALLY.**

**MARY KASANGO**

**JUDGE**