



REPUBLIC OF KENYA



KENYA LAW
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Ustawi Grain Millers Limited v Hema Bakers Limited; Oliech (Objector); Direct 'O' Auctioneers (Interested Party) (Civil Case E727 of 2022) [2025] KEMC 135 (KLR) (3 June 2025) (Ruling)

Neutral citation: [2025] KEMC 135 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CIVIL CASE E727 OF 2022
PA NDEGE, SPM
JUNE 3, 2025**

BETWEEN

USTAWI GRAIN MILLERS LIMITED JUDGMENT CREDITOR

AND

HEMA BAKERS LIMITED JUDGMENT DEBTOR

AND

MILLICENT AWUOR OLIECH OBJECTOR

AND

DIRECT 'O' AUCTIONEERS INTERESTED PARTY

RULING

1. The court is asked by an application dated 17.3.2025 to commit the Interested Party herein, Joseph Kang'ethe T/A Direct "O" Auctioneers, to civil jail for contempt of court orders issued on 11/02/2025, for a period of 6 months. Alternatively, this Honorable Court is asked to impose a fine of Kshs. 5,000,000/- upon the same interested party, or any such other amount as the court may deem fit. There are further prayers as follows:
 - i. That in the interim, this Honorable Court be pleased to order the production and unconditional, immediate release of motor vehicle registration KDA 162 F to the objector/ Applicant on account of the fact that it is being exposed to elements of weather causing wear and tear wherever it is impounded by the Interested Party.
 - ii. That the OCS Kaptembwo Police Station be directed to enforce the orders issued herein.
 - iii. That mesne profits and costs of this application be borne by the Interested Party.



2. Briefly the applicant avers that the court issued an interim stay order dated 3.10.2024 staying attachment and sale of the vehicle herein that had been illegally and or irregularly impounded by the Interested Party, pending the hearing and determination of an application by the objector dated 24/09/2024, seeking the immediate and unconditional release of the said motor vehicle. That on 11/02/2025, this court found the objection proceedings to be with merit and consequently lifted the warrants of attachment in respect of the motor vehicle KDA 162F. This court further issued an order for the immediate unconditional release of the objector/ applicant's motor vehicle. That the said orders were extracted and served upon the Interested Party through its advocates, who despite participating in the objection proceedings, has disregarded the orders, and has therefore failed to discharge the immediate and unconditional release of the subject motor vehicle to the Objector/ Applicant.
3. The application came for inter partes hearing before me on 15/05/2025. Ms. Chepngetich appeared for the plaintiff/ judgment creditor and informed the court that they have always advised the Interested Party to abide by the orders of the court. Otherwise the application was not responded to, and it is therefore deemed unopposed.
4. Whereas the Application is unopposed; as a court of law, I have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. As held by the Supreme Court of Kenya in Gideon S. Konchellah Vrs Julius L. Sunkuli & 2 Others [2018] e KLR, it behoves the court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted. The court is thus under a duty to look at any points of law, such as any jurisdictional impediment, which might render the application a non-starter, or whether there is sufficient material that might enable the court to exercise its discretion in favour of an applicant, just like in case of a formal proof proceeding where the respondent or defendant fails to answer to claim in a main suit.
5. Section 10(3) of the Magistrates Courts Act is the guiding law on contempt of court after the [Contempt of Court Act](#) was declared unconstitutional. The Black Laws Dictionary 9th Edition defines contempt of court as conduct that defies the authority or dignity of a court for it interferes with the administration of justice and is punishable by a fine or imprisonment.
6. In Republic Vrs Mohamed & Another Petition 39 OF 2018 (2019) KESC 47 (KLR) (15th March 2019) (ruling), the court said that an act in contempt of court constitutes an affront to judicial authority and the court has liberty and empowerment to mete out the penalty for such conduct in a proper case, the object being to vindicate the courts authority, secondly, to safeguard its processes so as to sustain the rule of law and the administration of justice.
7. Striving to abide by court orders is not an option. It protects the dignity and the authority and a rule of law. It must be zealously guarded by the court by dealing firmly with any person who deliberately disobeys court orders or attempts to scuttle the court's process.
8. In Duncan Mamel Murugi Vrs Kenya Railways Corporation (2008) eKLR the court cited Brambvale Ltd (1970) CH 128 that contempt of court is an offense of a criminal nature.
9. In Steward Robertson Vrs Her Majesty's Advocate (2007) HCA C63, the court said contempt of court is constituted by conduct that denotes willful defiance of or disrespect towards the court or that willfully challenges or affronts the authority of the court or the supremacy of the law whether in civil or criminal proceedings. The court said that the power to punish for contempt is inherent in a system of administration of justice and such power is held by every judge.
10. In BOG Moi High School Kabarak Vrs Malcolm Bell & Another SCOK Petition No. 6 & 7 of 2013, the court described the power to punish for contempt as a power of the court to safeguard itself



against contemptuous or disruptive intrusion from elsewhere. It identified the power as one of the indisputable attributes of the court's inherent powers without which the protection of citizens' rights and freedoms would be virtually impossible and may reduce courts of law to futile institution spewing forth orders in vain.

11. In *Heelmore Vrs Smith 2* (1886) L.R 35, Lord Bowen L. J held that the rationale was the object of the discipline enforced by the court in case of contempt as not to vindicate the dignity of the court or the person of the judge but to prevent undue influence with the administration of justice.
12. In *Sammy Nyamweya & Others Vrs Kenya Premier League Ltd & Others* (2015) eKLR, the court observed that the power to punish for contempt of court has never been about protecting a judge's feelings, ego or dignity. It is to safeguard the rule of law and its supremacy. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. It is not about placating the applicant who moves the court by taking out the contempt proceedings. It is about assuring a party who walks through the justice door with a court order in his hands that the order will be obeyed by those to whom it is directed. Further the court observed that a court order requiring compliance is not a mere suggestion or an opinion or a point of view. It is a command that is issued after much thought and with circumspection. The court said that an order must be complied with and it is in the interest of every person that it remains the case, otherwise, to see it any other way is to open the door of chaos and anarchy. Additionally, the court said that anyone dissatisfied with an order of a court has avenues to challenge it, otherwise defiance should not be an option.
13. In *K.G.G.A Vrs Francis Atwoli & Others* (2012) eKLR the court cited *Clarke & Others Vrs Chadbarn & Others* (1985) 1 ALL ER P.C 211, that willful disobedience to an order of the court is punishable as contempt of court even if the defendant thought that the injunction was improperly obtained or too wide in its terms, for that does not provide an excuse for disobeying it, the remedy is to vary or discharge it.
14. In *Econet Wireless Ltd Vrs Minister For Information & Communication Of Kenya & Another* (2005) eKLR, the court observed that where an application for committal for contempt of court orders is made, the court will treat the same with a lot of seriousness and urgency and more often will suspend any other proceedings until the matter is dealt with and if contempt is proven to punish the contemnor or demand it be purged or both, the reason being that a contemnor would have no right of audience in any court unless he is punished or purges the contempt.
15. What then is the procedure? In *Githinga & Others Vrs Kiru Tea Factory Co. Ltd* Petition No. 13 of (2019) (2023) KESC 4 11 (KLR) (16th June 2023) (Judgment), the Supreme Court of Kenya observed that due to the quasi-criminal nature of contempt proceedings and the gravity of the consequences that flowed from proceedings courts should adhere to the principles of natural justice, procedure, fairness and the right to fair hearing.
16. The court observed that in enforcing compliance with lawful court orders procedures adopted by the court must be fair, reasonable and be such that a full opportunity is given to an alleged contemnor to defend himself or herself.
17. The court said that under Article 5 (2) of the [Constitution](#) the right to a fair hearing is a duty imposed on a court to guarantee the parties to contempt proceedings procedural justice, by evaluating the evidence brought forth and calling the parties. The court held further that procedural fairness in the administration of justice involved fair hearings and the rule against bias.
18. In this application the citee was served through the judgment creditor's counsel's e-mail address. This process being quasi-criminal in nature, and going by the Supreme Court's judgment as summarised



hereinabove, I do find that direct and personal service on the interested party would have served the interest of justice. I do therefore issue summons to the interested party to attend these proceedings on a date to be agreed on so that he be heard in his defence viva voce, or via any other means he may prefer, provided that his attendance to the court shall be physical and not virtual.

19. Meanwhile, I do allow the application in terms of prayers 4 and 5 of the application. I do therefore issue interim orders as follows:
- i. Summons do issue to the Joseph Kangethe T/A Direct '0' Auctioneers to attend court physically on a date to be agreed with a view to give his defence on the allegations levelled against him herein, viva voce or by whatever means he preferred.
 - ii. An order is hereby issued that the vehicle herein be produced and unconditionally immediately released to the Objector/ Applicant on account of the fact that it is being exposed to elements of weather causing wear and tear wherever it is impounded by the Interested Party.
 - iii. The OCS Kaptembwo Police Station be directed to enforce the orders issued herein.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT NAKURU ON THIS 3RD DAY OF JUNE, 2025

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In presence of: -

Applicant's Counsel:

Judgment Creditor's Counsel:

Judgment Debtor's Counsel:

Applicant/ Objector:

Judgment Creditor:

Judgment Debtor:

Interested Party:

