



**China State Construction Engineering Corporation (Kenya) Limited v Libuyi (Suing as the Director of Thelmax Contractors Limited) & another; Okadenyi (Interested Party) (Civil Appeal E196 of 2024) [2025] KEHC 14831 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14831 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CIVIL APPEAL E196 OF 2024  
AC BETT, J  
OCTOBER 23, 2025**

**BETWEEN**

**CHINA STATE CONSTRUCTION ENGINEERING CORPORATION (KENYA) LIMITED ..... APPELLANT**

**AND**

**SAMUEL LIBUYI (SUING AS THE DIRECTOR OF THELMAX CONTRACTORS LIMITED) ..... 1<sup>ST</sup> RESPONDENT  
MUNEX & COMPANY AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**BRIAN MMBAYA OKADENYI ..... INTERESTED PARTY**

**RULING**

1. On 19th June 2025, this court found the Respondents, Samuel Libui and Oliver Wafula Simiyu, guilty of contempt of court and ordered them to appear personally before court on 17<sup>th</sup> July 2025 to show cause why they should not be punished for the contempt and in default warrants of arrest to issue.
2. The Respondents had been found guilty of a court order dated 6<sup>th</sup> December 2024. On 17<sup>th</sup> July 2025, the parties, the Respondents appeared in court, whereby the 1<sup>st</sup> Respondent, through his Counsel, Mr. Mbaka, tendered an apology. He submitted that the 1<sup>st</sup> Respondent is a well-known business person in Kakamega and in the Western region and was tendering an unequivocal apology to court for the disobedience of the court orders. He sought the indulgence of the court stating that the apology is genuine and urging the court to take the same into account.
3. He further submitted that his client respects the rule of law and is committed to upholding the same in whatever capacity he will have in future. He said that the subject matter involved a property that



had since changed hands and had complicated the purging of the contempt, and that he was not in control of repossessing the subject vehicle; however, the proceeds from the sale are quantifiable, and if there is a dispute by the Appellant, the parties could agree on the actual figure. According to him, the 1<sup>st</sup> Respondent and the Appellant have been in business for over six years and have a good working relationship, and the dispute before the court arose during the course of the business.

4. Mr. Mbaka further submitted that on 7<sup>th</sup> January 2025, the Appellant paid the 1<sup>st</sup> Respondent the sum of Ksh. 1,000,000/= being part of the amount owed to the 1<sup>st</sup> Respondent as stated in paragraph 19 of their replying affidavit dated 29<sup>th</sup> January 2025. He said that at the moment, both parties are in good terms and prayed that the court pardons his client and reprimands him. He prayed for a reasonable fine.
5. On behalf of the 2<sup>nd</sup> Respondent, Mr. Mango, submitted that the 2<sup>nd</sup> Respondent has had time to reflect over his actions and with the benefit of hindsight has come to the painful realization that as an officer of the court, he should have exercised better judgment. He stated that the 2<sup>nd</sup> Respondent is truly responsible for having disobeyed this court's order and tendered an unreserved apology for the inconvenience caused to the parties and to the court.
6. According to Mr. Mango, the 2<sup>nd</sup> Respondent has made attempts to purge the contempt and his efforts were directed at the Interested Party to try and persuade him to return the subject motor vehicle to the Appellant at the 2<sup>nd</sup> Respondent's own costs, but sadly the Interested Party said that he will wait for the outcome of the court. The 2<sup>nd</sup> Respondent, in order to hasten the matter and to give reprieve to the Appellant, is conceding the appeal immediately so that whatever orders emanate from the appeal will be binding to him fully.
7. In light of that, the 2<sup>nd</sup> Respondent requests that the court take cognizance of the fact that he is a young upstart in business and he prays that justice be tempered with mercy as the court considers the sentence to be meted against him. Mr. Mango further submitted that having looked at the proceedings in the lower court and in his view, those proceedings as they were, were defective and should be struck off in the first instance.
8. Mr. Mango said that he reaffirms the position that the 2<sup>nd</sup> Respondent, having tendered his apology, seeks leniency and is willing to abide by any orders of the court.
9. On behalf of the Appellant, Mr. Wanyonyi submitted that the conduct of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is reprehensible and is an affront to the administration of justice and the dignity of the court. He urged the court to note that when orders were issued, counsel were present and at that time the motor vehicle was with the Auctioneer and so the Respondents did a deliberate act which has derailed the administration of justice.
10. In the circumstances it was his submission, that the remorse that they are trying to express is not genuine and was done after the court found them guilty of contempt. Mr. Wanyonyi submitted that when this appeal was filed, having realized that the process from the root was flawed, the Respondents ought to have conceded the appeal so that the parties would not have to undergo the process, but they failed to do that.
11. Mr. Wanyonyi urged the court to note that the 2<sup>nd</sup> Respondent is an officer of the court who knows the law and the procedure and what is done before properties can be attached. He contended that it was his duty to advise the 1<sup>st</sup> Respondent on what should be done. He further submitted that the 1<sup>st</sup> Respondent, who is a Director of a company knows the law but chose to follow a path which is contrary to the law.



11. He pointed out that the 1<sup>st</sup> Respondent confirmed that payment was made which they received in settlement of what was owed to the 1<sup>st</sup> Respondent, they cannot have both the vehicle and the money yet they did not make the disclosure that they had received the money until the hearing. Mr. Wanyonyi referred to the case of Johnson v. Grant, 1923, AC 789 at 790, where the Lord President Clyde stated that:-

“ ..... the law does not exist to protect the personal dignity of the judiciary nor the private or litigants It is not the dignity of the court which is offended.It is the fundamental supremacy of the law which is challenged”.
12. Mr. Wanyonyi urged the court to take steps that are necessary for the protection of the law so that those who want to disobey the courts must know that there are consequences of disobeying court orders. He contended that the court must send a strong message that court orders should be obeyed. He submitted that the court has powers to make orders for punishment through fine or imprisonment and stated that the subject motor vehicle has been in the hands of another party for a period of six months and as of now, the current status of the vehicle is not known. It was his view that if it needs to be returned, then it should be returned to the court for inspection to be done to ascertain whether it is still in the state it was in.
13. On behalf of the Interested Party, Mr. Otsyeno stated that his client was a victim of circumstances. He submitted that we exist in a new Constitution which guarantees fundamental rights of dignity and other rights of parties.
14. He stated that his client has a right to property. And at that time, the subject motor vehicle had already passed to his client and was registered in his name. He said that prior to the application for contempt, his client went through the auction and is an innocent purchaser. There was no good title passed to him, however it was not the mistake of the Interested Party as he saw an advert in the Star newspaper dated 6<sup>th</sup> December 2024 and he was not served with any order by the Auctioneer or any of the parties that prevented him from participating in the auction.
15. He stated that he has made extensive repairs to the motor vehicle, which is still in the garage in Nakuru, as its parts are repaired. According to him, there is a Valuation Report that the engine is not working and the vehicle was unroadworthy. He bought the vehicle at Ksh. 440,000/= and it is their prayer that this court orders that he should not return the motor vehicle as he has incurred extra costs, including the payment of duty. The motor vehicle should not be returned. He reiterated that his client was an innocent purchaser for value without notice of any defect in title.
16. In rejoinder, Mr. Mbaka submitted that the 1<sup>st</sup> Respondent is willing to refund the proceeds received from the Auctioneers because it has been paid its debt. He said that the 1<sup>st</sup> Respondent received Ksh. 300,000/= while Mr. Mango said that the Interested Party should not be allowed to benefit from a flawed process and any loss or damages that have been occasioned to him can be recovered from the parties who caused it as there was no proper title to be passed to the Interested Party.
17. The Appellant on its part stated that the remedy of the Interested Party is damages against the parties who caused the whole scenario as the law is very clear that the Interested Party can only be deemed an innocent purchaser if there is no issue with the title or dispute thereof. It was Mr. Wanyonyi's submissions that in the Interested Party's application, he did not indicate that the vehicle that was sold to him was defective and he did not explain how he came to know of the matter in court and he therefore cannot justify what he did.



18. I have carefully considered the Respondents' submissions in mitigation. Both of them have expressed remorse and urged the court to exercise leniency.
19. On his part, the 1<sup>st</sup> Respondent who is a Director of the 1<sup>st</sup> Company expressed his unequivocal apology. However, his actions were reprehensible and despite his apology, he did not demonstrate much remorse. As a result of his disobedience of the court order, the Appellant suffered total loss of its motor vehicle registration No. KCT 129X Toyota Hilux Double Cabin.
20. On his part, the 2<sup>nd</sup> Respondent tendered an unreserved apology and in an attempt to purge the contempt, conceded the appeal.
21. Both Respondents submitted that efforts to purge the contempt by returning the subject motor vehicle did not bear fruits as the vehicle had passed to the Interested Party who purchased the same through public auction and is therefore an innocent purchaser for value without notice of any defect in title.
22. I note that despite both Respondents having received the sum of Ksh. 300,000/= and Ksh. 140,000/= respectively being the proceeds from the sale of the motor vehicle, none of them tendered the proceeds to court as part of their efforts to purge the contempt.
23. I have considered the fact that the Appellant has been denied the user of the motor vehicle for a period of approximately 10 months through no fault of its own.
24. In my mind, the Respondents acted in impunity. They attached the vehicle three (3) days after being served with an order staying execution and sold it eleven (11) days later on 14<sup>th</sup> December 2024. Such actions were a slap in the face of the rule of law that calls for obedience of lawful court orders, more so for the 2<sup>nd</sup> Respondent who is an officer of the court and bound by the provisions of the Auctioneer's Act.
25. It is trite law that courts have inherent power to punish for contempt. This position was underscored by the Supreme Court in *Githiga & 5 others v. Kiru Tea Factory Company Ltd* [2023] KESC 41 (KLR) when it held that:-

“...Courts possess the inherent power to enforce compliance with their lawful orders through sanctions imposed through contempt of court. We note that the *Contempt of Court Act* having been declared unconstitutional in *Kenya Human Rights Commission v Attorney General & Another* [2018] eKLR on November 9, 2018 the instructive provision remains section 5(1) of the *Judicature Act* which grants the High Court and the Court of Appeal the power to punish for contempt. It provides:“

5. The High Court and the Court of Appeal shall have the same power to punish
  - (1) for contempt of court as is for the time being possessed by the High Court of Justice in England and that power shall extend to upholding the authority and dignity of subordinate courts.”

26. The Respondents must be held accountable for their defiance of lawful court orders. The Court of Appeal in affirming the power of the court to punish in *Dr. Fred Matiangi – The Cabinet Secretary, Ministry for Interior and Coordination of National Government v. Miguna Miguna & 4 others* [2018] KECA 789 (KLR) held thus:-

“When courts issue orders, they do so not as suggestions or pleas to the persons at whom they are directed. Court orders issue ex cathedra, are compulsive, peremptory and expressly binding. It is not for any party; be he high or low, weak or mighty and quite regardless of



his status or standing in society, to decide whether or not to obey; to choose which to obey and which to ignore or to negotiate the manner of his compliance. This Court, as must all courts, will deal firmly and decisively with any party who deigns to disobey court orders and will do so not only to preserve its own authority and dignity but the more to ensure and demonstrate that the constitutional edicts of equality under the law, and the upholding of the rule of law are not mere platitudes but present realities.”

27. The court has power to punish an errant Auctioneer through mechanisms laid down in the Auctioneer’s Act because a Licenced Auctioneer is an officer of the court. He is expected to eschew misconduct and is under duty to act in a manner befitting an officer of the court as provided in Section 23 of the Auctioneer’s Act which states:-

“A licensed auctioneer shall—

- (a) at all times act in a manner befitting an officer of the court and shall ensure that his employees, servants or agents act in like manner;
- (b) act in accordance with such rules as may be prescribed when repossessing, attaching, storing or selling any property pursuant to the provisions of any written law or contract;
- (c) maintain such books, accounts, records or other documents as may be prescribed and furnish the same to the Board at such time and in such manner as may be prescribed.”

28. Where the Auctioneer is found to have committed an offence, a general penalty is prescribed under Section 27 of the Act, which is a fine not exceeding Ksh. 100,000/= or to imprisonment of a term not exceeding two years or both. Additionally, if the court is of the view that the offence was of such a nature as to warrant suspension or revocation of the Auctioneer’s licence, it can order the suspension or revocation of the licence. (See Section 28).

29. As an officer of the court, the 2<sup>nd</sup> Respondent was acting as an agent of the court and not the 1<sup>st</sup> Respondent. He has a higher calling and should at all times exercise due diligence in discharge of his duties. His duty is to abide by the orders of the court and not to act at the behest of the instructing party. He must be conscious of the fact that once he is aware of a court order, he is under duty to obey the order or face the dire consequences of disobedience prescribed in the Auctioneer’s Act.

30. I have set out the provisions of the Auctioneer’s Act so that the 2<sup>nd</sup> Respondent can fully comprehend the likely consequences of his disobedience. However, I have considered the fact that the 2<sup>nd</sup> Respondent has demonstrated great contrition and desire to make amends. He has even conceded the appeal thereby saving the Appellant and the court some precious time. He deserves some level of leniency.

31. This court has a duty to uphold its dignity. It can only do so by sending a message to the litigants that obedience of court orders is an imperative while disobedience of the same carries heavy penalties.

32. In the case of Kennedy Kilali Wekesa & 2 others v. Patrick Wanyonyi Munialo [2025] KECA 679 (KLR), the Court of Appeal dismissed an appeal against a decision in which the Appellant had been found guilty of contempt and fined Ksh. 300,000/= each and upheld the decision of the trial court.

33. The Interested Party rightly conceded that the 2<sup>nd</sup> Respondent did not have good title to pass to him as the sale was conducted in defiance of a court order staying execution and which order had been duly served upon the Respondents. He maintained that he was an innocent purchaser. However, the fact



that one is an innocent purchaser does not confer good title on him. The general principle in the *Sale of Goods Act* is that one cannot pass a better title than he has. In the present context, the 2<sup>nd</sup> Respondent's authority is derived from the warrants of attachment and sale which had been stayed by the court. The order of stay had the effect of revoking the legal authority to sell. Any sale in defiance of an order of stay is a nullity and the purchaser does not acquire a legitimate title. This was reiterated in the case of *Ogweno Abongo* [2023] KEHC 26156 (KLR) when the court quoted the English case of *M'Cfoy v. United Africa Co. Ltd* [1967] 3 ALL ER 1169 where Lord Denning held that:-

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse...”

34. The principle of “*nemo dat quod non habet*” underpins the law that no one can give what they do not have. However, the law provides some exceptions to the rule in that if one can prove that he is a purchaser of goods for value without notice, on the belief that the Vendor had the legal authority to sell, then he may acquire a good title provided possession has been transferred. In *Haul Mart Kenya Ltd v. Tata Africa Holdings (Kenya) Ltd* [2017] eKLR, the court ruled that the purchaser had acquired good title to tractors and caneloaders despite the seller not having clear title.

35. Section 26 of the *Sale of Goods Act* provides:-

“(1) Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge or other disposition thereof, to any person receiving them in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make it.

(2) Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge or other disposition thereof, to any person receiving them in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

(3) In this section, “mercantile agent” means a mercantile agent having, in the customary course of his business as agent, authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods.”

36. It is therefore imperative that a purchaser demonstrates that he acted in good faith in order to benefit from the exception to the “*nemo dat quod non habet*” principle. In *Diamond Trust Bank Kenya Ltd v.*



Said Hamad Shamisi & 2 others [2015] KECA 717 (KLR), the Court of Appeal considered the import of Section 26 (1) and (2) of the *Sale of Goods Act* and had this to say:-

“Firstly, section 26 (1) and (2) are exceptions to the general rule in the sale of goods that a person who does not have title to goods cannot, without the owner’s authority or consent, sell and confer a better title in the goods than he has. (Nemo dat quod non habet). These exceptions are examples of initiatives towards the protection of commercial transactions that Lord Denning famously referred to in *Bishopsgate Motor Finance Corporation Ltd V. Transport Brakes Ltd* (1949) 1 KB 322, at pp. 336-337 when he stated:

“In the development of our law, two principles have striven for mastery. The first is for the protection of property: no one can give a better title than he himself possesses. The second is for the protection of commercial transactions: the person who takes in good faith and for value without notice should get a good title. The first principle has held sway for a long time, but it has been modified by the common law itself and by statute so as to meet the needs of our own times.”

In *Pacific Motor Auctions Pty. Ltd V. Motor Credits (hire Finance) Ltd* (1965) AC 867 AT P 886 the Privy Council explained that the purpose of that provisions is:

“to protect an innocent purchaser who is deceived by the vendor’s physical possession of goods or documents and who is inevitable unaware of legal rights which fetter the apparent power to dispose.”

Secondly, to avail itself of the protection offered by section 26(2), the Bank would have to have received the buses in good faith and without notice of any lien or other right of Shamisi in respect of them. We agree with the Bank that, under section 2(2) of the *Sale of Goods Act*, in determining whether it had acted in good faith the test is whether its acts were done honestly irrespective of whether it was negligent or not. In other words, the fact that the Bank may have been negligent is not in itself evidence of lack of honesty on its part.

Lastly, the burden is upon the defendant to establish that he dealt with the goods of the plaintiff honestly or in good faith and without notice. In *Kuwait Airways Corporation V. Iraq Airways Company & Others*, (2002) UKHL, 19, Lord Nicholls of Birkenhead stated as follows on the issue:

“A person in possession of goods knows where and how he acquired them. It is up to him to establish that he was innocent of any knowing wrong doing.”

37. The Interested Party was able to establish that he purchased the subject motor vehicle following an advertisement in the Star Newspaper, which is a publication with wide circulation. He provided the court with documents to prove that he paid for the motor vehicle and started repairing it upon valuation. I am satisfied that the Interested Party was an innocent purchaser for value without notice of the absence of legal authority on the part of the 2<sup>nd</sup> Respondent. I will therefore not nullify the sale.
38. The Respondents were both aware of the orders of stay when the subject motor vehicle was sold. I find both Respondents liable for the loss of the motor vehicle. They should compensate the Appellant for the loss of user. In regard to the 2<sup>nd</sup> Respondent, Section 26 of the Auctioneer’s Act provides:-

“Subject to the provisions of any other written law, a person who suffers any special or general damages by the unlawful or improper exercise of any power by a licensed auctioneer shall be entitled to recover any damages directly suffered by him from the auctioneer by action:



Provided that nothing in this section shall—

- (a) prevent the auctioneer from claiming contribution or indemnity from any other person;
- (b) limit the damages recoverable under any other written law.”

39. This court has inherent power to make any orders that it deems fit and necessary for the ends of justice as envisioned under Section 3A of the Civil Procedure Act which states:-

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

40. Since the Respondents have conceded that they are not in a position to purge the contempt because the subject motor vehicle has left their hands, the only recourse for the court is to order them to jointly and severally pay the full value of the motor vehicle and to compensate the Appellant for loss of user.

41. The Appellant did not file a Valuation Report nor tender any evidence of loss of user. The Interested Party filed a Valuation Report dated 28<sup>th</sup> July 2025 by Alben Auto Valuers & Assessors Ltd which placed the value of the vehicle at Ksh. 450,000/= on the grounds that the vehicle was unroadworthy and the engine not functional. It was purchased at Ksh. 440,000/=. However, I note that the 2<sup>nd</sup> Respondent had indicated that the vehicle was in moving condition and placed its value at Ksh. 700,000/= during proclamation. I also note that the 1<sup>st</sup> Respondent receipted and retained the sum of Ksh. 300,000/= while the 2<sup>nd</sup> Respondent received Ksh. 140,000/= being his charges.

42. The final orders therefore are as follows:-

- (a) The 1<sup>st</sup> Respondent shall pay a fine of Kshs. 200,000/= or serve six (6) months imprisonment in default.
- (b) The 2<sup>nd</sup> Respondent shall pay a fine of Ksh. 100,000/= or serve six (6) months imprisonment in default.
- (c) The 1<sup>st</sup> Respondent shall pay the Appellant Ksh. 500,000/= for loss of the subject vehicle and its user.
- (d) The 2<sup>nd</sup> Respondent shall pay the Appellant Ksh. 300,000/= for loss of the subject vehicle and its user.
- (e) There shall be stay of execution for 30 days subject to each of the Respondents depositing a suitable security in court.

39. Those are the orders of the court.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 23<sup>RD</sup> DAY OF OCTOBER 2025.**

**A. C. BETT**

**JUDGE**

In the presence of:

Mr. Wanyonyi for the Appellant

Mr. Mbaka for the 1<sup>st</sup> Respondent



2<sup>nd</sup> Respondent present

No appearance for the Interested Party

Court Assistant: Polycap

