



**Sheppard & another v Sailoji & another (Miscellaneous Application
E189 of 2025) [2025] KEELRC 3197 (KLR) (14 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3197 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E189 OF 2025**

**SC RUTTO, J
NOVEMBER 14, 2025**

BETWEEN

JASON SHEPPARD 1ST APPLICANT

MISSION 180 MINISTRIES 2ND APPLICANT

AND

JEREMIAH MUUYA SAILOJI 1ST RESPONDENT

**BENARD ANALO MAKATIANI (T/A BENWILL AUCTIONEERS) 2ND
RESPONDENT**

RULING

1. The Applicants moved this Court by way of a Notice of Motion dated 15th July 2025, seeking the following orders:
 1. Spent.
 2. That the 2nd Respondent, Bernard Analo Makatiani t/a Benwill Auctioneers, be cited for contempt and/or be committed to civil jail or such other penal consequence as the court may deem fit.
 3. That the 2nd Respondent be ordered to produce the attached goods before the court.
 4. That the costs of this application be in the cause.
2. The Notice of Motion is anchored on the grounds set out on its face and is supported by the affidavit of the 1st Applicant, Jason Sheppard, sworn on 15th July 2025. Mr. Sheppard, who describes himself as the Director of the 2nd Applicant, deposes that on 13th June 2025, agents of the 2nd Respondent, trading as Benwill Auctioneers, went to his residence and proceeded to attach property belonging to the 1st Applicant, including a motor vehicle registration number KDM 411V and three cows.



3. He states that the Court had issued interlocutory orders restraining the sale or disposal of the Applicants' assets. However, despite these orders, the 2nd Respondent allegedly continued to advertise the said assets online, and Mr. Sheppard is uncertain whether the assets have since been sold.
4. Mr. Sheppard further avers that the Applicants' advocates served the 2nd Respondent with a soft copy of the court orders on 17th June 2025 and a hard copy on 19th June 2025.
5. He adds that on 24th June 2025, the Applicants' advocates wrote to the 2nd Respondent notifying them that their actions were in breach of the court orders and that contempt proceedings would be instituted against them.
6. In Mr. Sheppard's view, the conduct of the 2nd Respondent was unlawful and contrary to the principles of natural justice and fair procedure.
7. The 2nd Respondent did not file any response to the Application.

Submissions

8. Despite the Applicants uploading their written submissions onto the online portal, they failed to pay the requisite court fees and were, consequently, deemed not to have duly filed them.

Analysis and Determination

9. To my mind, the central issue for determination is whether the 2nd Respondent is in contempt of the court orders issued on 17th June 2025.
10. The Black's Law Dictionary (9th Edition), defines contempt of court to mean:

“The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.”

11. It has been said time without number that the essence of contempt proceedings is to safeguard the supremacy of the law. As such, the reason courts will punish for contempt is to safeguard the rule of law, which is fundamental in the administration of justice. This position was affirmed in *Teachers Service Commission v Kenya National Union of Teachers & 2 others* (2013) eKLR.
12. Further, it is a cardinal principle of law that court orders must be obeyed unless and until they are varied or set aside. Consequently, any willful or deliberate disobedience of an order requiring a person to perform or refrain from a specific act will ordinarily amount to contempt of court.
13. In *Sheila Cassatt Issenberg & Watoto World Centre v Antony Machatha Kinyanjui* [2021] KEHC 5692 (KLR), the Court outlined the elements that must be established in civil contempt proceedings as follows: -

“The Cromwell J, writing for the Supreme of Canada in *Carey v Laiken*, 2015 SCC 17 (16th April 2015), expounded on the three elements of civil contempt of court which must be established to the satisfaction of the court, thus:

- i) The order alleged to have been breached “must state clearly and unequivocally what should and should not be done.” This ensures that a party will not be found in contempt where an order is unclear. An order may be found to be unclear if, for example, it is missing an essential detail about where, when



or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning.

- ii) The party alleged to have breached the order must have had actual knowledge of it. It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the willful blindness doctrine.
- iii) The party alleged to be in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.”

14. Further, in the case of *North Tetu Farmers Co. Ltd v Joseph Nderitu Wanjohi* [2016] KEHC 7193 (KLR) the Court considered the elements of civil contempt as laid out in *Contempt in Modern New Zealand*, thus: -
 - a. The terms of the order (or injunction or undertaking were clear and unambiguous and were binding on the defendant;
 - b. The defendant had knowledge of or proper notice of the terms of the order;
 - c. The defendant has acted in breach of the terms of the order; and
 - d. The defendant conduct was deliberate.
15. In the present case, the record bears that on 17th June 2025, this Court issued an order staying the execution of the judgment and decree in *Milimani MELRC No. E517 of 2021* pending further orders, and in addition, restrained Benwill Auctioneers from selling or otherwise disposing of the attached goods belonging to the Applicants until further directions of the Court. Therefore, the terms of the order were clear and unambiguous and were binding on the Respondents.
16. Attached to Mr. Sheppard’s Supporting Affidavit is an Affidavit of Service sworn on 26th June 2025 by Josphat Simeon Mutunga, confirming that the court order issued on 17th June 2025 was served upon the 2nd Respondent on 18th June 2025 via email at benwillauctioneers@gmail.com. To this end, the Court finds no reason to doubt that the 2nd Respondent was aware of and had knowledge of the terms of the order issued on 17th June 2025. Therefore, the remaining question for determination is whether the 2nd Respondent has acted in breach of the terms of the order, and whether such conduct was deliberate.
17. Mr. Sheppard contends that despite the Court’s order issued on 17th June 2025, the 2nd Respondent continued to advertise the Applicants’ assets online, and as at the time of filing the present application, it remained unclear whether those assets had already been disposed of.
18. In view of Mr. Sheppard’s assertions, it was expected that the Applicants would have provided evidence demonstrating the alleged online sale of their goods by the 2nd Respondent. Regrettably, no such evidence was furnished. Consequently, it remains unclear whether the 2nd Respondent indeed proceeded to sell the attached goods in contravention of the Court’s order issued on 17th June 2025.
19. In so finding, the Court is mindful that contempt proceedings bear a quasi-criminal nature; therefore, the standard of proof required is higher than that of a balance of probabilities. This heightened standard is necessitated by the fact that the liberty of the alleged contemnor is at stake, and the Applicant must demonstrate wilful and deliberate disobedience of the court order to succeed. (See the case of *Gatharia K. Mutikika vs Baharini Farm Limited* [1985] KLR 227 and *Peter K. Yego & Others vs Pauline Nekesa Kode Nakuru HCCC No. 194 of 2004*).



- 20. Applying the elements of civil contempt proceedings to this case, I am not persuaded that the Applicants have sufficiently demonstrated that the 2nd Respondent has acted in breach of the terms of the court's order issued on 17th June 2025.
- 21. In conclusion, the Court finds that the Applicants have not proved their case to the requisite standard to warrant the grant of the orders sought. Accordingly, the Application dated 15th July 2025 is hereby dismissed, with no order as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF NOVEMBER, 2025.

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STELLA RUTTO

JUDGE

In the presence of:

Ms. Kabaila instructed by Mr. Mutiso for the Applicants

Ms. Kibare for the 1st Respondent

No appearance for the 2nd Respondent

Elijoy Court Assistant

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

