

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL AND TAX DIVISION
MISC. APPLICATION NO. E635 OF 2022

BETWEEN

**JP ADVOCATES.....DECREE
HOLDER**

AND

**TIAN HE RUO DIAN LIMITED.....1ST JUDGMENT
DEBTOR**

**YANG ZIZHUO.....2ND JUDGMENT
DEBTOR**

AND

**STANBIC BANK KENYA LIMITED.....
GARNISHEE**

AND

**KENYA REVENUE AUTHORITY
INTERESTED PARTY**

RULING

1. The application for determination by the Court is that of the Decree-Holder (Advocates) dated 17th October 2024 that seeks to find the Garnishee (Stanbic) and its CEO, Mr. JOSHUA NYAMWEYA OIGARA, in contempt of Court for allegedly disobeying various Court

orders. The application is supported by the affidavit of PATRICK MURIMI NTHIGA, an advocate practicing in the Advocates' firm, sworn on 17th October 2024.

2. It is opposed by Stanbic through the replying affidavits of its Legal Advisor,

SAMUEL KAHUHU, sworn on 4th November 2024 and 3rd March 2025.

The Interested Party (KRA) also responded to the application through the replying affidavit of its officer and Manager in charge of Dispute Management, NAFULA ODONYA, sworn on 21st March 2025.

The application has been canvassed by way of written submissions which I have considered and I will be making relevant references to the same in my analysis and determination below.

Analysis and Determination

3. From the parties' submissions, I can deduce that the issue for determination is whether Stanbic and its CEO are in contempt of the Court's orders issued on 9th September 2022, 11th May 2023, 20th November 2023 and/or 9th April 2024 and whether the Advocates are entitled to the orders sought in their application. The Advocates state that on 9th September 2022, the Court issued orders to preserve funds, Kshs.19,261,262.00/=, in the 1st Judgment Debtor's (Tian) account at Stanbic. On 11th May 2023, the Court ordered the preserved funds to be released to KRA subject to costs

payable to the Advocates. On 20th November 2023, the Court varied its earlier order, directing Stanbic to hold Kshs.2,643,385.63/= in trust for the Advocates, pending the taxation of their legal fees. On 22nd December 2023, a Certificate of Taxation was issued, setting the Advocates' legal fees at Kshs.2,628,385.63/= and on 23rd January 2024, the Certificate of Taxation was adopted as a Court decree. On 9th April 2024, the Court ordered Stanbic to pay the sum immediately to the Advocates.

4. The Advocates now allege that despite these clear and repeated Court orders, Stanbic blatantly disobeyed the orders to preserve the funds and then to pay the specified amount. That on 24th November 2023, just days after the order to hold the funds for the Advocates, Stanbic allowed three transactions that emptied the account, leaving only Kshs.160,014.69/=. The Advocates state that Stanbic has failed to explain where the preserved funds went and has refused to pay the decreed amount to the Advocates. As such, the Advocates seek to summon Mr. OIGARA, the CEO of Stanbic, to Court to explain why he should not be punished for contempt, commit him to civil jail for a term of up to six months for contempt, direct him to immediately pay the Kshs.2,628,385.63/= to the Advocates and impose a fine on him for contempt.

5. In response, Stanbic depones that the original Court order to preserve the funds was tied to the resolution of KRA's tax case and that once the Court issued its final ruling on 11th May 2023 ordering the funds to be released to KRA, the preservation order ceased to exist. That crucially, on 10th November 2023, KRA formally wrote to the Stanbic lifting the agency notice that had frozen the account and with no Court preservation order and KRA's freeze lifted, Stanbic contends it had no legal justification to prevent the account holder, Tian from accessing its funds. Stanbic swears it was unaware of the Court's order of 20th November 2023 which directed it to hold Kshs.2,643,385.63/= for the Advocates. It claims its lawyers were not present when the order was issued because the Court session was rescheduled without notifying them.
6. Stanbic states it first learnt of this order on 9th January 2024, via an email from the Advocates' counsel, weeks after the Tian had emptied the account on 24th November 2023. Regarding the 9th April 2024 order to pay the Advocates, Stanbic states that by that time, the account balance of Kshs.157,934.69/= was insufficient to cover the decreed amount and that it had already filed an application to have the order set aside or varied on this basis. Stanbic argues that the application fails the legal test for civil contempt as it did not have knowledge of the 20th November 2023

order when the funds were withdrawn, its conduct was not deliberate but based on the instructions from KRA and the lack of knowledge of the new Court order.

7. For the above reasons, Stanbic asserts that it acted in good faith, following the instructions of KRA after the main case was concluded and it maintains there was no willful disobedience of a known Court order. Consequently, it prays for the Court to dismiss the contempt application with costs.
8. It is trite that once a Court issues an order, it binds all and sundry, the mighty and the lowly equally without exception. It is meant to be obeyed and not otherwise and that the ingredients required to be proved for a successful contempt prosecution were set out by the Court of Appeal in **Ochino & another v Okombo & 4 others [1989] KECA 65 (KLR)** where it cited its own decision in **Mwangi Mangondu v Nairobi City Council (Civil Appeal No. 95 of 1988)** where it held that, “[T]he Court will only punish as a contempt breach of injunction if satisfied that the terms of the injunction are clear and unambiguous, that the defendant has proper notice of the terms and that breach of the injunction has been proved beyond reasonable doubt.” The position on the applicable standard of proof has been affirmed by the Supreme

Court which held as follows in **Githiga & 5 others v Kiru Tea Factory Company Ltd [2023] KESC 41 (KLR)**:

In enforcing compliance with lawful Court orders, the procedures adopted by the Court must be fair and reasonable in which full opportunity is given to an alleged contemnor to defend himself or herself. This is because contempt proceedings being quasi-criminal, require a higher standard of proof than in normal civil cases, and one can only be committed to civil jail or penalized on the basis of evidence that leaves no doubt as to the contemnor's culpability.

9. The determination of whether Stanbic are in contempt boils down to whether they had knowledge of the orders of 20th November 2023 and whether they wilfully disobeyed the same by allowing Tian to empty the bank account. Stanbic has annexed the certified Court proceedings, showing Stanbic's counsel was initially present in Court but was absent when the matter was heard as from 1:18PM. It is also not in dispute that the Court order was formally issued on 28th November 2023. As per the statements of account annexed, the bank account was emptied by Tian on 24th November 2023, four days before the order was formally and officially issued and before the date Stanbic says it was first aware of the Court order. In my view, the evidence strongly supports

Stanbic's claim that it did not have actual knowledge of the 20th November 2023 order on the said date of 24th November 2023 when Tian accessed the account.

10. I am in further agreement with Stanbic's position that once the Court issued its final ruling on 11th May 2023, ordering the funds to be released to KRA, the preservation order issued earlier on 9th September 2022 ceased to exist. Furthermore, Stanbic has annexed a letter from KRA dated 10th November 2023 which formally lifted the Agency Notice that underpinned the preservation. Upon receipt of this letter from the beneficiary of the Court's final order, Stanbic was legally entitled, if not obligated, to allow the account holder to operate its account. The Advocates' attempt to extend the life of the preservation order indefinitely, after the matter was conclusively determined and the notice lifted, is without legal foundation.

11. Further, in respect of the 9th April 2024 order, I agree that by this date, the money was gone. Stanbic could not comply with an order to pay money that was no longer in the account and it immediately filed an application to have the order set aside. Failure to pay due to impossibility is generally not considered contemptuous if the party has taken steps to bring this to the Court's attention, which Stanbic has done in the present case.

12. In sum, I find and hold that the Advocates have failed to discharge the high burden of proof required for a finding of contempt of Court. Regarding the 20th November 2023 order, the Advocates have failed to prove Stanbic had knowledge of it at the material time. Regarding the September 2022 and May 2023 orders, Stanbic has provided a credible legal justification for its actions, based on the finality of the Court's judgment and the instructions from the lawful beneficiary, KRA. It is therefore my finding that regarding the 9th April 2024 order, Stanbic's failure to comply stems from impossibility, not willfulness.

13. As stated before, a finding of contempt is a grave matter that impugns the character of the alleged contemnor and can lead to the deprivation of liberty. It is not a tool for enforcing decrees but a sanction for defying the Court's authority. In this instance, the evidence does not support a finding of such defiance.

Conclusion and Disposition

14. In the upshot, I find that neither Stanbic nor its CEO are in contempt of the Court's various orders. The Advocates' application stands dismissed forthwith. Each party shall bear their own costs of the application.

**DATED SIGNED and DELIVERED virtually at NAIROBI this 7TH
DAY of NOVEMBER 2025**

.....

J.W.W. MONGARE
JUDGE

IN THE PRESENCE OF:-

1. Mr. Wachira holding brief from Mr. Murimi for the Decree-Holder/Applicant.
2. Mr. Gacuca holding brief for Mr. Mwangi for the 1st Respondent - Stanbic bank.
3. N/A for the Judgment Debtor.
4. N/A for the 2nd Interested Party - KRA.
5. Amos - Court Assistant