



Republic v Nairobi Metropolitan Services (NMS) & 5 others; Metro Trans EA Limited (Interested Party); Kaka Travellers Co-operative Savings and Credit Society Limited (Ex parte Applicant); Omurwa (Contemnor) (Judicial Review Application E131 of 2022) [2025] KEHC 15641 (KLR) (Judicial Review) (3 November 2025) (Ruling)

Neutral citation: [2025] KEHC 15641 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION E131 OF 2022
RE ABURILI, J
NOVEMBER 3, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

NAIROBI METROPOLITAN SERVICES (NMS) 1ST RESPONDENT

**THE DIRECTOR ROADS, PUBLIC WORKS TRANSPORT,
NMS 2ND RESPONDENT**

THE DIRECTOR OF ENFORCEMENT, NMS 3RD RESPONDENT

THE INSPECTOR GENERAL OF POLICE 4TH RESPONDENT

THE DTO CENTRAL POLICE STATION 5TH RESPONDENT

THE HON ATTORNEY GENERAL 6TH RESPONDENT

AND

METRO TRANS EA LIMITED INTERESTED PARTY

AND

**KAKA TRAVELLERS CO-OPERATIVE SAVINGS AND CREDIT SOCIETY
LIMITED EX PARTE APPLICANT**

AND

ROSANA OSCAR OMURWA CONTEMNOR



RULING

1. This morning, this court delivered a ruling determining the application dated 11/3/2024 which sought for review and setting aside of various orders issued by this court by Ndungú J on 1/11/2022 being an interim order, the Ruling of 23/2/2023 on contempt of court based on the order of 1/11/2022 extracted on 2/11/2022 and the warrants of arrest issued against the contemnor.
2. The court dismissed all the prayers sought by the contemnor in the stated application thereby affirming that the subsequent orders of the court pursuant to the interim order of 1/11/2022 were validly made based on a valid/regular order of 1/11/2022 as extracted on 2nd November, 2022.
3. At the end of the Ruling being delivered, Mr. Tugee Counsel for the contemnor applied for leave to appeal and stay of contempt proceedings pending taking instructions from the contemnor and filing of an appeal to the Court of Appeal, after reading the ruling and getting instructions.
4. The ex-parte applicant's Counsel opposed the application for stay and submitted that the contemnor has exhibited delay in this matter which has kept the main motion in abeyance since 2022 and that regarding contempt proceedings, the contemnor had already filed an appeal before the Court of Appeal before filing the application seeking to set aside the order of 1/11/2022.
5. I have considered the oral application by the contemnor and the response by the exparte applicant's submissions in opposition.
6. On the prayer for leave to appeal, it is true that the applicant brought the application under several provisions of the law. He sought for review and setting aside of various orders of the court, some orders like those related to contempt of court and consequential orders thereto were also challenged before this court but dismissed and that there is a Notice of Appeal and an application pending before the Court of Appeal.
7. However, as stated in my Ruling this morning, the earlier applications were not grounded on the alleged irregularity of the interim orders of 1/11/2022 extracted and signed by the Deputy Registrar on 2/11/2022.
8. The question of whether leave to appeal is necessary, depends on whether the original order or decree could only be appealed with leave of the court.
9. In this case, the original order is that made on 1/11/2022 granting interim stay in terms of the prohibition order sought by the exparte applicant in the prayer No. 3 of the application for leave to apply.
10. As there is no express provision for appeal against the order for interim stay, it follows that a ruling on an application for expunging, and or setting aside or review of that order of interim stay on account of irregularities, and seeking that the entire contempt of court proceedings herein, and the ruling dated 23rd February 2023 on contempt of court be set aside, can only be appealable with leave of court.
11. The Notice of Motion dated 11th March 2024 and filed on the even date was brought under Sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 45 Rule 1 and Order 51 Rule 1 of the Civil Procedure Rules and Article 51 of *the Constitution*.
12. I hasten to add that an appeal from a decision on contempt of court proceedings can only be with leave of the court. Having said as much, and having considered the application for leave to appeal, and in



view of the clear record showing that there was no irregularity in the extracted order of 1/11/2022 signed on 2/11/2022, I find that the application for leave to appeal is not merited. I find it frivolous and intended to delay this matter further. I dismiss it.

13. On whether I should grant stay of contempt proceedings, I observe that the contempt proceedings stem from the order made by the court on 1/11/2022 and these same contempt proceedings were sought to be set aside by the contemnor but the courts that handled his application declined to set aside those proceedings and orders. The applicant then filed Notice of Appeal and an application is pending before the Court of Appeal for determination on merit.
14. In the premises, this court has no jurisdiction to revisit matters which the Court of Appeal is already seized of. The applicant can seek for stay of contempt proceedings before the Court of Appeal which is seized of his appeal or Notice of Appeal and an application challenging the contempt proceedings.
15. I therefore decline to stay contempt proceedings. Needless to say, that as the Ruling of today dismissed an application for review of the orders of 1/11/2022, as extracted on 2/11/2022, there is no positive order which the court made and which it can stay.
16. The contemnor shall appear before this court physically on 12/11/2025 for mitigation.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF NOVEMBER, 2025

R.E. ABURILI

JUDGE

