



**EGR v GMK (Civil Appeal E108 of 2024)
[2025] KEHC 17412 (KLR) (Family) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17412 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY
CIVIL APPEAL E108 OF 2024**

**PM NYAUNDI, J
NOVEMBER 27, 2025**

BETWEEN

EGR APPLICANT

AND

GMK RESPONDENT

RULING

1. By a Notice of Motion dated 31st March 2025, the Applicant seeks the following orders;
 1. Spent.
 2. Spent
 3. That the Respondent is in contempt of court orders issued on 13th November 2024 which she has deliberately and intentionally refused to comply.
 4. That summons be issued against the Respondent to appear before court and show cause why she should not be fined and/or committed to civil jail for such term as the court may deem just;
 5. That the Respondent be cited for contempt of court and be committed to civil jail for a term of six (6) months until she purges the contempt and complies with the orders of this Honourable Court issued on 13th November 2024.
 6. That the Respondent be ordered to purge her contempt on terms this court deems fit;
 7. That costs of this application be borne by the defendant/Respondent.
2. The application is premised upon Sections 3, 4(1) (a), 5, 28 and 34 of the *Contempt of Court Act* No. 46 of 2016, Sections 1A and 3A of the *Civil Procedure Act*, Cap 21 and Order 51 Rule 1 of the Civil



Procedure Rules, 2010 and is supported by Applicant's affidavit of even date and a further affidavit sworn on 12th June 2025.

3. The application is opposed by the Respondent who filed a Replying Affidavit sworn on 17th April 2025.
4. The Application was canvassed by way of written submissions. The Applicant filed written submissions dated 30th June 2025 whilst the Respondent relied on submissions dated 14th August 2025.

Background

5. The Appeal herein emanates from the decision of the Court in Milimani Children Case No. E 030 of 2022. The trial court delivered its judgement on 27th January 2023 and issued the following orders;
 - a. That both parents shall have joint custody of the minors. The plaintiff shall continue to have actual custody, care and control of the children.
 - b. That the defendant shall pay school fees and cater for school related expenses for the minors at a school to be mutually agreed upon.
 - c. That the defendant shall take out a National Insurance Fund Cover for the minors.
 - d. That each party shall bear its own costs.
6. The Applicant was aggrieved by the orders of the trial court and filed a Notice of Motion under certificate of urgency dated 5th September 2024 seeking the following orders;
 - a. That the application herein be certified as urgent and be heard exparte during the High Court Vacation on account of its urgency.
 - b. That this Honourable Court stays execution of the Ruling and orders issued by the Children's Court at Milimani in Children Case No. E030 of 2022 pending the hearing and determination of this application.
 - c. That this Honourable Court stays execution of the Ruling and orders issued by the Children's Court at Milimani in Children Case No. E030 of 2022 pending the hearing and determination of this appeal.
 - d. That this Honourable court be pleased to review and/ or vary and/or modify the orders from the Judgment of 27th January 2023 to the extent that the children be transferred to a public school where the Applicant is able to afford school fees and school related expenses.
 - e. That in the alternative to prayer no (d) above this Honourable Court be pleased to review and/ or vary and/or modify the judgment and orders of 27th January 2023 to the extent that the Applicant be allowed to pay school fees and school related expenses of Kshs.20,000/- per child per term at the minor's current schools pending the hearing and determination of the Appeal.
 - f. That any other orders that this court may deem fit.
 - g. That the costs of this application be provided for.
7. On 6th September 2024, this court granted stay pending hearing and determination of the application dated 5th September 2024 on condition that the applicant deposits Kshs. 600,000 in court within 14 days. The matter was to be mentioned on 13th November 2024 for the Applicant to make a proposal on settlement of arrears and payment of school fees for the children.



8. When the matter came up for mention on 13th November 2024, the court issued the following orders regarding the application dated 5th September 2024;
 1. The application is allowed in terms of prayer (c) on condition that the Applicant pays the fees due at the schools the minors are currently attending as proposed in paragraphs 3 (a) and (b) not later than the 5th day upon schools reopening effective January 2025.
 2. That the applicant effects transfer to the Respondent of property number 823 Kamae Re- Settlement within 60 days.
 3. The Applicant will prepare and serve record of appeal within 90 days.
 4. Mention on 26/3/2025 to confirm compliance.

Applicant's Case.

9. The Applicant states that the Respondent was aware of the orders of 13th November 2024 but proceeded to attach his motor vehicle and sold it through public auction. He states that the respondent is in contempt of the orders of 13th November 2024 because she has refused to give to his advocates her national identity and KRA pin to enable them transfer 823 Kamae Re-Settlement to her name. He argues that the respondent does not deserve any audience in this court until the contempt is purged.
10. In his further affidavit, the applicant states that the respondent was served with the court orders on 4th December 2024. He avers that her counsel was made aware of the orders even before service of the order. This is the reason she lodged a Notice of Motion to set aside the orders of the court. He denies receiving an email from the respondent's advocate asking him to pay auctioneers. He avers that the attachment of the vehicle was illegal and due process was not followed. He denied the allegation that the Respondent sent her documents to his advocates to enable them transfer the property to her. He argues that the sale was on 2nd December 2024 while the school fees was due on 5th January 2025. He paid the school fees on time.

Respondent's Case

11. The Respondent's case is that the Applicant obtained the orders of 13th November 2024 in her absence and that of her advocate and did not immediately serve it. She avers that they were served with the stay orders on 4th December 2024 via email. The school fees for the minors was due. The applicant's car was attached on 2nd December 2024. After being served with the stay orders, her advocates asked the Applicant to pay auctioneer fees for the vehicle to be released to him. Instead of paying Kshs. 168, 913, the applicant paid Kshs. 10,000 to the auctioneer. On 20th December 2024, the applicant's advocate requested her advocate for copies of national identity card, KRA pin and passport photos which were sent to him on the same day. As of 3rd January 2025, the applicant had not cleared the auctioneer's fees or paid school fees for the children. When the children reported to school on 6th January 2025, they were not allowed to attend classes because their school fees had not been paid. after the applicant's vehicle had been attached. She gave instructions to her advocate to sell the car through the auctioneer to enable her pay school fees for the children.
12. The respondent's position is further that the applicant paid half of the school fees on 7th February 2025, more than a month from the court's deadline. According to her, the court orders lapsed on 6th January 2025 and the Applicant did not seek for extension of time to comply with the court orders. She avers that she and the auctioneer are not in contempt any court orders. No orders were directed to



her or the auctioneer. The auctioneer sold the vehicle after the lapse of the stay orders. She urged the court to dismiss the applicant's application.

Applicant's Submissions.

13. The Applicant submitted that despite the existence of a stay order, the Respondent instructed the auctioneers to attach his motor vehicle. Relying on the decision of *Kariuki & 2 others v Minister for Gender, Sports, Culture & Social Services & 2 others* [2004] KEHC 2652 (KLR), the Applicant submitted that the Respondent is in contempt of the court orders because she was aware of the court orders but defied them by instructing an auctioneer to sell the applicant's vehicle. According to him, the attachment of the vehicle was illegal because the procedure of attachment was not followed. That such disobedience should be reprimanded by the court. Reliance was placed on the decision of *Mate & Another v Wambora & Another* (2017) KESC 1.

Respondent's Submissions.

14. Relying on the decision of *Samwel M.N Mweru & Others v National Land Commission & 2 Others* [2020] eKLR, the respondent submitted that the applicant was under duty to prove: terms of the order; knowledge of the terms by the Respondent; and failure by the Respondent to comply with the terms of the order. The Respondent argued that the orders were issued on 13th November 2024, they were extracted on 3rd December 2024 and allegedly served on 4th December 2024. She argues that by the time the orders were served, the attachment had already been done and her advocates was not served. She denied defying the court orders. She argued that the application lacks merit and should be dismissed.

Analysis And Determination

15. I have considered the Notice of Motion, the affidavits in support thereof and the Respondent's Replying Affidavit thereto and the further affidavit filed. From the nature of the prayers sought, I find that the main issue for determination is whether the Respondent is in contempt of the orders issued on 13th November 2024 and if yes, what orders should issue.
16. At the outset, I note that the application is premised on the provisions of the *Contempt of Court Act* No. 46 of 2016, this statute was declared unconstitutional in the case of *Kenya Human Rights Commission vs. Attorney General & Another* [2018] eKLR. The applicable law as thus and was held by the Court of Appeal in *Christine Wangari Gachege vs. Elizabeth Wanjiru Evans & 11 Others*, [2014] eKLR ought to be section 5(1) of the *Judicature Act*. However, this court is alive to the provisions of Order 51 Rule 10(1) of the Civil Procedure Rules, 2010 to the effect that no application shall be refused merely by reason of a failure to state the order, rule or other statutory provision under or by virtue of which any application is made. Further Article 159 of *the Constitution* requires this court not to give undue regards to technicalities.
17. It is trite law that orders made by a properly constituted court of law must be obeyed unless and until that order is discharged and this obligation extends even to cases where the person affected by an order believes it to be irregular or even void. (See *Hadkinson v Hadkinson* [1952] ALL ER). It is essential for the maintenance of the Rule of Law and order that the authority and dignity of our courts are upheld at all time. The Court will not condone deliberately disobedience of its orders and will not shy away from its responsibilities to deal firmly with proved contemnors. (See *Econet Wireless Kenya Ltd v Minister for Information of Kenya & Another* [2005] eKLR).
18. In order to succeed on an application for contempt of Court, the Applicant must satisfy the court of the following elements as was discussed by the court in *Katsuri Limited vs Kapurchand Depor Shah* [2016] eKLR:-



- a. That the terms of the order (or injunction or undertaking) are clear and unambiguous and are binding on the Defendant.
 - b. That the Defendant has knowledge of or proper notice of the terms of the order.
 - c. The Defendant has acted in breach of the order.
 - d. The Defendant's conduct is deliberate.
19. The standard of proof required in cases of contempt is higher than that required in an ordinary civil case. The applicant must demonstrate wilful and deliberate disobedience of a court order. In *Oilfield Movers Ltd v Zahara Oil & Gas Limited* [2020] eKLR the court stated -
- “It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or motive of the existence of the order of the court forbidding it. The threshold is quite high as it involves possible deprivation of a person's liberty.....”
- See also *Katsuri Limited vs Kapurchand Depor Shah* (supra)
20. It is from the foregoing that this court will proceed and interrogate the facts of the case and examine as to whether there is sufficient evidence to find that the respondent was in contempt of the court orders made on 13th November 2024.
21. As to the terms of the order being clear and unambiguous and are binding on the defendant (respondent), this is not in dispute. The respondent did not dispute the clarity or unambiguity of the orders and or the same being binding to her.
22. This application turns on whether the respondent had knowledge of or proper notice of the terms of the order, the parties have taken divergent views on this issue. The applicant states that the respondent was in breach of the orders in issue. His case is that the respondent was aware of the orders of 13th November 2024 but proceeded to attach his motor vehicle and sold it through public auction. The Respondent in response deposed that the Applicant obtained the orders of 13th November 2024 in her absence and that of her advocate and did not immediately serve it. She avers that they were served with the stay orders on 4th December 2024 via email after the applicant's car was attached on 2nd December 2024. The applicant in the further affidavit the applicant did not dispute having served the orders on 4th December 2024. It is further not in dispute that the suit motor vehicle was attached on 2nd December 2024. It is therefore clear that as at the time of attaching the suit motor vehicle, the respondent herein had not been served with the orders made on 13th November 2024.
23. Further, the acts complained of as being contemptuous are the ones attaching the suit motor vehicle and proceeding to sell the same through public auction. The respondent in her replying affidavit deposed that after being served with the stay orders, her advocates asked the Applicant to pay auctioneer fees for the vehicle to be released to him but instead of paying Kshs. 168, 913, the applicant paid Kshs. 10,000 to the auctioneer. That as of 3rd January 2025, the applicant had not cleared the auctioneer's fees or paid school fees for the children. When the children reported to school on 6th January 2025, they were not allowed to attend classes because their school fees had not been paid and she gave instructions to her advocate to sell the car through the auctioneer to enable her pay school fees for the children. Further that the applicant paid half of the school fees on 7th February 2025, more than a month from the court's deadline. The applicant filed a further affidavit and wherein he deposed that the attachment of the vehicle was illegal and due process was not followed. He argues that the



sale was on 2nd December 2024 while the school fees was due on 5th January 2025 and that he paid the school fees on time.

24. The applicant on the other hand has not presented any evidence that he paid school fees on time.
25. It is clear that there is a dispute as to when the sale took place. The applicant's position is that the same took place in December while the respondent deposed that the sale was in January and after the school fees had not been paid. The rule is that he who alleges must prove. The applicant's case being that the sale was on 2nd December 2024, then as I observed above the same was before the orders were made known to the respondent. He cannot thus argue that the sale was after he served the orders.
26. Having found that at the time the vehicle was attached the applicant was yet to serve the orders and at the time of the sale, the applicant had not complied with the orders requiring him to pay fees, I am unable to find that the respondent is in contempt.
27. Accordingly, the application is dismissed with costs to the respondent assessed at Kshs 35000 payable within 30 days.
28. The appeal will proceed to hearing. The appellant will file and serve submissions within 14 days.
29. The respondent will file and serve submissions within 14 days of service. Mention on 18th February 2026 to confirm compliance and set a date for judgment.

It is so ordered

DATED AND DELIVERED VIRTUALLY at NAIROBI this 27th Day of NOVEMBER 2025.

P .M NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

Ochieng Wasonga for Respondent

Ms. Kiama holding brief for Mageto for Applicant/Appellant

