



REPUBLIC OF KENYA



**Aspect Group Holdings Limited v Mwangi (Commercial Case
E003 of 2024) [2026] KEHC 1226 (KLR) (10 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1226 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
COMMERCIAL CASE E003 OF 2024
AK NDUNG’U, J
FEBRUARY 10, 2026**

BETWEEN

ASPECT GROUP HOLDINGS LIMITED APPLICANT

AND

JOHN MIGWI MWANGI RESPONDENT

RULING

1. The Application for determination herein is made by notice of motion dated 13/08/2024 for orders that;
 - i. Spent
 - ii. Spent
 - iii. The court be pleased to cite the director of the Respondent John Migwi Mwangi and the Chief Executive Officer, Absa Bank Limited and any other person responsible for contempt of the court orders issued on the 15/07/2024 and therefore liable for punishment to pay fine and/or be committed to civil jail for a period of 6 months for disobeying orders issued by this court on 15/07/2024.
 - iv. Costs of the application be provided for.
2. The application is based on the grounds on the face thereof and is supported by an affidavit sworn by Festus Arasa Omwamba, Director of the Applicant herein. He deposed that the Respondent was a party to a consent order given on 15/07/2024 but has refused to abide by the terms of the consent and has continued to hold the Applicant’s goods. That the Respondent having been a party and even served with the order has acted with disdain by refusing to heed to the court order. The Applicant is apprehensive that the bank is working in cahoots with the Respondent to deprive the Applicant of the fruits of the orders of this court. The Respondent will suffer no loss if the orders sought are granted and



that the Respondent with intent to frustrate the recovery of the debt is in the process of transferring the funds from the local limits of the jurisdiction of this court.

3. There was no response by the Respondent but the alleged contemnor, the Absa Bank Kenya Plc filed a replying affidavit dated 29/08/2024 and sworn by Michael Massawa, the legal counsel at the bank. He deposed that the account number 0314273680 belongs to the Respondent who is deceased. That the bank was not a party to the suit and it was not privy to the consent order as the same was adopted between the Plaintiff and Defendant. The consent order was self enforcing as the Plaintiff had the option of attaching the Defendant's accounts and assets. The Plaintiff should have obtained a decree and enforce it through garnishee proceedings and not contempt proceedings against the bank which was not a party to the suit.
4. Further, the bank noted that it had been served with special limited grant emanating from Milimani CM. Succession Cause No. E077 of 2023 which turned out to be illegally obtained. Additionally, the bank noted it had in its record a death certificate indicating that the customer, the Defendant in this case passed away on 12/04/2023. That the legality of the proceedings and consent is doubtful since the case was filed in 2024 against the Defendant in person and the consent was entered into on 15/07/2024 whereas the Defendant died on 12/04/2023. That the fact that the Defendant passed away before the suit was filed coupled with the fact that a consent was recorded when the Defendant was already deceased without further explanations renders the order sought to be enforced to be a nullity ab initio and incapable of enforcement.
5. The application was canvassed by way of written submissions.
6. The alleged contemnor maintained that the bank was not a party to the suit, the Applicant should have obtained a decree and file garnishee proceedings against the bank, the consent had a default clause of execution against the Defendant and not the bank, the Defendant is deceased having passed away even before the consent order was recorded and the suit was filed after demise of the Defendant raising doubt whether his estate was served and whether the consent was rightfully adopted. That any proceedings after demise and without substitution were a nullity as held in CKM v ENM & another (2024) KECA 293(KLR) held.
7. As to whether the order was clear, unambiguous and unequivocal, he submitted that the order was recorded irregularly and did not impose any obligation on the bank. As to whether there was compliance with the order, he submitted that the bank had no obligation to make payment hence it cannot be said to have violated the consent. Therefore, it cannot be said to be in contempt. He submitted that the proceedings were fraudulent since the Defendant is long deceased.
8. I have considered the application, the response and submissions made by the alleged contemnor. The Applicant's prayer is that the Respondent herein and Absa Bank be cited for contempt of the consent order of 15/07/2024. The terms of the said consent order were as follows;
 - a. That the Defendant/Debtor owes the Plaintiff/Creditor as at 10/07/2024 a sum of Kenya shillings fifteen million shillings only (15,000,000) and which the Defendant undertakes to pay on or before 17/07/2024 close of business.
 - b. That in default of prayer (a) above the court do hereby direct/order that all the monies held by the Defendant/Debtor at Absa bank a/c no. 0314273680 and any other account(s) in other branches or banks be released to the Plaintiff/Creditor's advocate herein forthwith.
 - c. That in default of prayer (a) and (b) above respectively, the court hereby order that the Plaintiff/Creditor by themselves and/or their agents/auctioneers are at liberty to attach any other



accounts or property belonging to the Defendant herein to satisfy the debt as acknowledged herein.

- d. The matter be marked as settled.
9. The Respondent contention is that it was not privy to the consent order as it was not a party to the suit. Further, the consent order is not binding on it since it was not a party to the suit.
 10. The court in Samuel M.N Mweru & others v National Land Commission & 2 others (2020) eKLR set out four element that must be proved in civil contempt cases which are;
 - i. “The terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the Defendant;
 - ii. The Defendant had knowledge of or proper notice of the terms of the order;
 - iii. The Defendant has acted in breach of the terms of the order; and
 - iv. The Defendant’s conduct was deliberate.”
 11. As stated by the alleged contemnor, it is clear that though they were served with the consent order, they were not a party to the suit leading to the adoption of the consent order. The court in Julius Kigen Kibiego v Angeline Korir & Another [2012] KEHC 326 (KLR) stated thus;

“The much that counsels for the parties could have done was to record a consent that only binds the two parties to the proceedings. They did not have capacity to enter into a consent that affects a third party. Just as in a contract, the parties to a contract can only agree on rights and duties amongst themselves. Parties to a contract cannot rope in a third party without his consent as this will go against the doctrine of privity of contract. An agreement attempting to bind a third party is one that cannot be binding on the third party without his consent. It is for this reason that I take the position that the subject consent was irregular. The parties herein could not enter into a consent directing the school on what to do. The consent, in so far as it went to bind the School (presumably Moiben Primary School) to occupy a certain piece of land was to that extent irregular.”
 12. It is also questionable on how the consent order was obtained as shown by the alleged contemnor that the Respondent herein passed away in 2023 before the filing of the suit and before the adoption of the consent order.
 13. On the material before court, it emerges that the institution of proceedings in High Court Civil Suit No. E003 of 2024 at Nanyuki is a matter that must attract the eye of The office of Director of Criminal Investigations as the same is filed on 15th July 2024 yet a death certificate marked MM-4 in the Replying affidavit sworn by Michael Massawa shows that the defendant, John Migwi Mwangi died on 12th April 2023. Thus the defendant would not have instructed anyone to file suit at the time this suit was filed.
 14. That said, it is again obvious that the bank herein was not a party in the suit and therefore could not possibly be in contempt of the court order as the only obligation against the bank would be, in proper garnishee proceedings, to freeze the Judgement debtor’s Accounts to the extent of the decretal sum upon service of Garnishee Order Nisi and once a Garnishee Order Absolute order is served to pay the specific amount directly to the decree holder or to court as may be specified in the order.
 15. With the result that the application herein fails and is dismissed with costs at the higher scale against the Applicant. The Estate of the deceased John Migwi Mwangi be at liberty to institute investigations through the DCI over the apparent fraud in the filing of this matter.



DATED SIGNED AND DELIVERED VIRTUALLY THIS 10TH DAY OF FEBRUARY 2026.

A.K. NDUNG’U

JUDGE

