



**Muller & another v Lochab Transport Limited; Daily Trucks Limited & another  
 (Objector); Fracht AG & 2 others (Respondent) (Civil Suit E234 of 2024)  
 [2026] KEHC 1507 (KLR) (Commercial and Tax) (13 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1507 (KLR)

**REPUBLIC OF KENYA  
 IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
 COMMERCIAL AND TAX  
 CIVIL SUIT E234 OF 2024  
 FG MUGAMBI, J  
 FEBRUARY 13, 2026**

**BETWEEN**

**HEINZ MULLER ..... 1<sup>ST</sup> PLAINTIFF**

**RUTH MULLER ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**LOCHAB TRANSPORT LIMITED ..... DEFENDANT**

**AND**

**DAILY TRUCKS LIMITED ..... OBJECTOR**

**GAMU WOODWORK LIMITED ..... OBJECTOR**

**AND**

**FRACHT AG ..... RESPONDENT**

**NATIONAL TRANSPORT AND SAFETY AUTHORITY ..... RESPONDENT**

**BERNARD OYUGI OKETCH T/A BLEGIF CONSULT**

**AUCTIONEERS ..... RESPONDENT**



## RULING

### Background and Introduction

#### The Application Dated 25th January 2025:

1. This Ruling arises from three separate applications, the first of which is the one dated 25<sup>th</sup> January, 2025. The application was filed by the 2<sup>nd</sup> objector against the 1<sup>st</sup> and 2<sup>nd</sup> decree holders, seeking orders to have them committed for contempt of court. Specifically, the applicant alleges disobedience of this Court's order issued on 14<sup>th</sup> November 2024. The applicant further prays that the contempt be purged by authorizing the Officer Commanding Station (OCS), Makupa Police Station, to enforce the said orders by confiscating and delivering to the applicant motor vehicle registration number KDE 384F.
2. The application is supported by an affidavit sworn on the same date by Elijah Gachinju Kimani, a director of the applicant. In his affidavit, Mr. Kimani confirms that the alleged contemnors were decree holders in Milimani Commercial Civil Suit No. E234 of 2024, pursuant to which motor vehicle KDE 384F (the subject vehicle) was attached. However, this Court subsequently reversed the attachment and, by its order dated 9<sup>th</sup> July 2024, directed the unconditional release of the said motor vehicle to the applicant.
3. The 2<sup>nd</sup> objector laments that despite repeated demands and reminders, the decree holders have failed to comply with the Court's orders. At the time of objection proceedings, the decree holders had assured the Court that the motor vehicle had not been sold to any third party. Nevertheless, the vehicle was later sold in defiance of the Court's orders. The applicant therefore contends that the decree holders acted dishonestly and fraudulently, and that their continued disobedience renders them undeserving of the Court's discretion.
4. The decree holders opposed the application through a Replying Affidavit sworn on 11<sup>th</sup> March 2025 by their counsel, Divinah Sarange Ongaki. In the affidavit, counsel confirms that the applicant's motor vehicle was indeed attached pursuant to a proclamation notice and subsequent advertisement by Blegif Consult Auctioneers, who had been engaged to enforce warrants of attachment and sale. The auctioneers proclaimed the assets, advertised them in the Standard Daily on 25<sup>th</sup> June 2024, and conducted a public auction on 4<sup>th</sup> July 2024, at which all the assets, including the subject motor vehicle, were sold. Counsel therefore maintains that compliance with the Court's order was impossible, as the vehicle had already been disposed of.
5. Counsel further explains that she has filed an application before this Court seeking disclosure of the auction details and accounts from the auctioneers, as she is unable to ascertain the identity of the purchaser or the current whereabouts of the motor vehicle. In a further affidavit sworn on 20<sup>th</sup> March 2024, she contends that FRACHT AG, the 1<sup>st</sup> respondent, had placed caveats against the vehicles, but these caveats were registered only after the auction had taken place. She argues that the 1<sup>st</sup> respondent acted arbitrarily and unprocedurally in placing the caveats after the sale but before the transfer of ownership.

### Analysis and Determination

6. The legal basis for Contempt of Court Applications is Section 5 of the *Judicature Act*, as read with the principles laid down in *North Tetu Farmers Co. Ltd V Joseph Nderitu Wanjohi*, [2016] eKLR. In



that decision, the Court held that for civil contempt to be established, an applicant must prove four elements to a higher standard than in ordinary civil cases: That:

- (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's conduct was deliberate.

7. The question before the Court is whether the elements of contempt have been satisfied in the present case. The sequence of events is not in dispute. On 23<sup>rd</sup> May 2024, an interlocutory judgment was entered against the judgment debtor. Shortly thereafter, on 4<sup>th</sup> June 2024, the decree holders filed an application seeking to have the motor vehicles moved to a secure location. When the matter came before Mabeya, J on 5<sup>th</sup> June 2024, directions were issued requiring the parties to appear on 10<sup>th</sup> June 2024. At that stage, no interim orders had been granted. It is also evident that warrants of attachment were subsequently issued on 10<sup>th</sup> June 2024. A proclamation followed on 11<sup>th</sup> June 2024, and an advertisement was placed in the daily newspapers announcing that the motor vehicles would be auctioned on 4<sup>th</sup> July 2024 at 10:30 a.m.
8. Quite curiously, apart from the advertisement published in the daily newspapers, no further evidence has been placed before this Court to demonstrate that the auction actually took place or that the subject motor vehicle was sold to a third party on the stated date. Since this issue lies at the very heart of the present dispute, the decree holders bore the burden of producing cogent proof of the alleged sale including receipts of payment issued to the purchaser, transfer documents lodged with the national transport authority, or any records showing registration of the vehicle in the name of a third party.
9. The failure to provide even the most basic of these documents casts serious doubt on the decree holders' assertions of any sale having taken place before the orders were issued and certainly dents their credibility. It was this evidentiary deficiency that led the Court to conclude that: the decree holder has not satisfied this court that the said vehicle has been sold and registered in the name of a 3<sup>rd</sup> party. As such I accordingly order the lifting of the proclamation on the said vehicle.
10. By the time the judgment debtors filed their application dated 4<sup>th</sup> July 2024 seeking to stop the attachment, the only material on record suggesting a sale was the newspaper advertisement announcing an auction scheduled for 4<sup>th</sup> July 2024 at 10:30 a.m. No other evidence was presented to confirm that the auction had actually taken place or that the subject motor vehicle had been sold to a third party. When the matter came up for directions on 6<sup>th</sup> July 2024, this Court issued an interim order allowing prayer (2) of the application, thereby granting a temporary injunction against the sale of the proclaimed items pending further directions on 9<sup>th</sup> July 2024.
11. On that date, the Court directed that the status quo as at that afternoon be maintained until the hearing of the application. The order to maintain the status quo was premised on the fact that no evidence had been furnished to demonstrate that a sale had occurred. In the absence of such proof, the Court anticipated that the vehicle remained unsold.
12. Ultimately, in its ruling delivered on 8<sup>th</sup> November 2024, the Court pronounced itself in part as follows:
  - “ ii. The 2<sup>nd</sup> objector's application succeeds but only with respect to the motor vehicle KDE 384F. The decree holder has not satisfied this court that the



said vehicle has been sold and registered in the name of a 3<sup>rd</sup> party. As such I accordingly order the lifting of the proclamation on the said vehicle.

iii. The 3<sup>rd</sup> objector's application dated 10/7/2024 lacks merit and is dismissed with costs."

13. From this synopsis and going back to the elements of civil contempt, I am satisfied that all the elements for establishment of contempt of court have been satisfied. The orders of 6<sup>th</sup> July 2024 for an injunction against the sale, 9<sup>th</sup> July 2024 for maintenance of status quo and ultimately the ruling of 8<sup>th</sup> November 2024 were all clear and binding. They prohibited any sale or disposal of the subject vehicle. The decree holders, through counsel, were present when the orders were issued.
14. The decree holders claim the vehicle had already been sold before the orders were issued. Yet, they have failed to provide evidence of such sale. If indeed a lawful sale had taken place, nothing would have been easier than to provide evidence of such sale before the Court. The absence of such evidence is telling and leaves the Court with no alternative but to conclude that the decree holders breached the orders by failing to release the vehicle and by continuing to act as though it had been disposed of. The decree holders' contradictory positions, at one point insisting on a sale yet admitting they cannot obtain evidence from the auctioneer shows a deliberate disobedience of this Court's orders.
15. This brings me to the fact that the decree holders have sought to deflect responsibility by blaming the auctioneer for the failure to comply with this Court's orders. However, the law is clear that an auctioneer acts as an agent of the decree holders, engaged at their instance and under their authority to execute warrants of attachment and sale. The acts and omissions of such an agent bind the principal, and the decree holders cannot escape liability by hiding behind the auctioneer's conduct. It was incumbent upon them to supervise their agent, ensure compliance with the Court's directives, and furnish evidence of any sale they allege to have taken place.
16. Their failure to do so amounts to a dereliction of duty and demonstrates a deliberate disobedience of this Court's orders. The decree holders must therefore bear full responsibility for the actions of their agent, and they cannot be permitted to evade accountability by shifting blame.

#### Disposition

- i. Accordingly, I find the 1<sup>st</sup> and 2<sup>nd</sup> decree holders to be in contempt of this Court's orders issued on 6<sup>th</sup> July 2024 and 9<sup>th</sup> July 2024. In consequence, they shall have no audience before this Court until they purge the contempt, save only for purposes of the application dated 11<sup>th</sup> March 2025 which seeks to have the contempt purged and for purposes of mitigation and sentencing.
- ii. It additionally follows that the decree holders' application dated 3<sup>rd</sup> March 2025 shall remain in abeyance until such time as they comply with the orders of this Court by releasing, or facilitating the release of, motor vehicle registration number KDE 384F to the applicant.
- iii. To secure compliance, the Officer Commanding Station (OCS), Makupa Police Station is hereby directed to enforce this order and ensure delivery of the said motor vehicle to the applicant without further delay.
- iv. The costs of this application are awarded to the 2<sup>nd</sup> Objector/Applicant.



### **The Application Dated 11<sup>th</sup> March 2025:**

17. By this application the now contemnors seek several orders against Blegif Consult Auctioneers. They seek to have this Court compel the auctioneers to disclose their client account statements for the period of July 2024, or in the alternative, to render full accounts relating to the sale of a number of motor vehicles at the public auction held on 4<sup>th</sup> July 2024.
18. Secondly, they pray that the auctioneers be ordered to provide comprehensive information concerning the auction, including details of all bids, the identities, national identification numbers, and telephone contacts of those who participated, and in particular the successful bidders of the listed motor vehicles. Thirdly, they seek an order compelling the auctioneers to surrender the subject motor vehicle, registration KDE 384F to Gamu Woodworks Limited, or in the alternative, to pay to Gamu Woodworks the equivalent value of the said vehicle as realized at the auction of 4<sup>th</sup> July 2024.
19. They equally seek to have the auctioneers compelled to surrender the sales proceeds of the other listed motor vehicles to the applicants' advocates' bank account, to be held pending the hearing and determination of the substantive application.
20. Despite evidence of proper service, I note with concern that the respondent auctioneer has not filed any response or written submissions in opposition to the application. This silence is telling, particularly given the gravity of the issues raised. Having already pronounced myself on the contempt application dated 25<sup>th</sup> January 2025, it is clear that the contemnors must now take active steps to purge the contempt. The Court cannot countenance continued disobedience of its orders, nor can it allow contemnors to benefit from its processes while standing in violation of its authority.
21. For these reasons I am inclined to allow the application dated 11<sup>th</sup> March 2025, noting that it is unopposed and that its prayers are directed towards disclosure and accountability. This reinforces the need for this Court to intervene as the application seeks to provide this Court with a complete picture of the factual issues surrounding the disputed auction. More importantly, it represents a step towards ensuring that the contemnors begin to purge their contempt.

### **Disposition**

22. Accordingly, the application dated 11<sup>th</sup> March 2025 is allowed albeit with no orders as to costs.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 13<sup>TH</sup> DAY OF FEBRUARY 2026.**

**F. MUGAMBI**

**JUDGE**

Delivered in presence of:

Ms Cherop HB for Mr Mosota for the 1<sup>st</sup> respondent

Ms Nzisa HB for Ms Ongaki for the plaintiff

Court Assistant: Lillian

