



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. E016 OF 2025

PLATINUM CREDIT LIMITED

APELLANT

VERSUS

SABRA SAW MILLERS AND FURNITURE CO. LTD

RESPONDENT

(Being an appeal from the Ruling and order of the Chief Magistrate's Court in Kakamega, civil suit No. E107 of 2023 delivered on 6th February 2025)

JUDGEMENT

1. This appeal arises from a Notice of Motion application filed by the Respondent Sabra Saw Millers and Furniture Company Limited dated 13/11/2024 where they sought orders that the Appellant's Manager, Platinum Credit Limited Kakamega Branch be summoned in court to show cause why they should not be cited for contempt of court over the injunction orders issued on 9/6/2023 and confirmed on 10/8/2023 and further that the Appellant's Manager be held in contempt. The

Respondent had further prayed that the Appellant be ordered to purge the contempt and compensate the Respondent with the value of the attached goods at the prevailing market price.

2. In a ruling dated 6/2/2025, the trial Magistrate ordered that the Appellant's Branch Manager appear before the court to show cause why they should not be punished for contempt and secondly, to purge the contempt, the Respondent either reclaim and hand over to the Appellant the two wood planning machines or pay over to the Appellant an amount equivalent to the current market value of the two wood planning machines.
3. The Appellant, being aggrieved and dissatisfied with the ruling of the Honourable court delivered on 6/2/2025, appealed against the ruling on the following grounds;
 - a) *That the learned Magistrate erred in law and fact by failing to consider the appellant's responses to the contempt application filed by the respondent, thus condemning the appellant unheard.*
 - b) *That the learned Magistrate did not have regard to the appellant's written submissions on record in support of the appellant's evidence.*

4. The Appellant prays that the court dismiss the application dated 13/11/2024 and set aside the ruling and orders of the trial Magistrate.
5. The court directed that the appeal be canvassed by way of written submissions.

Appellant's Submissions

6. In their submissions dated 13/6/2025, the Appellant raised two grounds of appeal. On the first ground, as to whether the trial court considered the Appellant's response to the contempt application dated 13/11/2024, they argue that the trial court failed to consider their responses and submissions in its ruling, despite them having filed and served the same upon the Respondent and the Court through the e-filing portal. They quoted the case of ***Busia Water and Sewerage Services Company Ltd & another v Pramukh Cash and Carry Limited [2022] KEELC 2338 (KLR)***.
7. The Appellant avers that they had opposed the Respondent's application through a Replying Affidavit and written submissions and that the court failed to

consider their response, hence condemning them unheard.

8. On the second ground as to whether they deliberately disobeyed the trial court's order, they denied the allegations and cited the case of ***Crown Paints (Kenya) Limited v Dry Associates Limited [2023] KECA 1383 (KLR)***.
9. They deny the allegations that they sold off the Respondent's machines, stating that they were in a storage yard and not in their custody. They assert that they obeyed the court's orders barring the auctioning of the Respondent's machine and aver that the same was communicated in their Replying Affidavit, where they stated that they communicated to the Storage Yard concerning the contempt application through their Legal Officer after they established that they acted independently without their authority in disposing of the machines.

Respondent's Submissions

10. In their written submissions dated 8/7/2025, the Respondent raises three issues for determination.

11. On the first issue as to whether the trial court considered the Appellant's responses in the appeal, they opined that the trial court did consider the responses. Further, they relied on the chronology of the events leading to non-compliance with the orders. They cited the case of ***Kenya Power & Lighting Co. Ltd v Benzene Holdings Limited t/a Wyco paints [2016] eKLR.***
12. On whether the Appellant was in contempt and disobeyed the injunctive orders, they quoted Section 5 of the Judicature Act as well as Section 63 (c) of the Civil Procedure Act, giving the court the power to punish contempt orders and quoted the case of ***Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another [2005] eKLR.*** They stated that the injunction order dated 9/6/2023 was confirmed on 10/8/2023, and that the Appellant was not to dispose of the Respondent's machine or auction it pending the hearing of the suit.
13. On whether the Appellant can shift liability on the claim of privity of contract, the Respondent opposed the Appellant's argument that the machine was sold by a

third party, Jaline Storage Yard, as they were not privy to the agreement. They held that privity of contract does not relieve them from obeying the court orders and hold that in the principal -agency relationship, failure of the Appellant to notify its agent, being the owner of the Storage Yard, constitutes negligence on their part, hence contempt and quoted the case of ***United Millers Ltd v Kenya Bureau of Standards, 5 others [2021] KECA 1024 (KLR)***.

14. In conclusion, they assert that the Appellant lawfully disobeyed the injunctive orders and are now attempting to place the blame on a third party, which does not shield them from the contempt proceedings, and as such, the court's ruling was sound and based on the correct principle of the law; thus, the appeal should be dismissed for lack of merit.

Analysis and Determination

15. This being a first appeal from a ruling of the subordinate court, this Court is obligated to re-evaluate and re-consider the material placed before the trial court and draw its own conclusions, while bearing in mind that it did not have the advantage of seeing and

hearing the witnesses testify. This principle is well settled in ***Selle & Another v Associated Motor Boat Co. Ltd [1968] EA 123.***

16. This court has carefully considered the record of appeal, the rival submissions by Counsel, and the applicable law. The following are the issues for determination;
 - a) *Whether the trial court failed to consider the appellant's response and submissions, thereby condemning the appellant unheard;*
 - b) *Whether the trial court properly found the appellant to be in contempt of court orders; and*
 - c) *Whether the orders issued by the trial court warrant interference by this Court.*
17. It is not in dispute that the trial court, in its ruling dated 6/2/2025, issued injunctive orders restraining the Appellant from disposing of or auctioning the Respondent's two wood planing machines pending the hearing and determination of the suit. It is also not disputed that the machines were not subsequently available for return to the Respondent, according to the Appellant, who claimed a third party had sold them off without the Respondent's authority.

18. The law on contempt of court is now well settled. A court order is not issued in vain and must be obeyed by all persons to whom it is directed. In ***Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another [2005] KEHC 1767 (KLR)***, the Court stated that compliance with court orders is a fundamental requirement for the maintenance of the rule of law.
19. Ndolo, J. in the case of ***Teachers Service Commission v Kenya National Union of Teachers & 2 others [2013] eKLR*** stated that:-
- "... A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with, and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy, and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option."***

20. On the first issue, the Appellant contends that the learned trial Magistrate erred by failing to consider his response, that being the Replying Affidavit and written submissions filed in opposition to the contempt application dated 13/11/2024, he claims that this violated the rules of natural justice.
21. The right to be heard is a fundamental principle of justice and is anchored in Article 50 of the Constitution. Courts have consistently held that a party should not be condemned without being given an opportunity to be heard.
22. I have carefully analysed the impugned ruling by the Honourable trial Magistrate dated 6/2/2025, which gives a chronology of events that led to the court issuing the injunctive orders and addresses the conduct of the Appellant after service of those orders. I note that the trial court makes mention of the Respondent's grounds of opposition in its ruling. The trial court failed to address itself to the Appellant's replying affidavit in response to the contempt application despite the fact that it was already in the court record. The question is

whether the failure to consider the Appellant's replying affidavit prejudiced the Appellant.

23. Contempt proceedings are quasi-criminal in nature, and it has been held that they call for a higher standard of proof than in ordinary civil cases for the reason that it often results in severe penalties, including committal to civil jail. In **Githiga & 5 others v Kiru Tea Factory Company Ltd [2023] KESC 41 (KLR)**, the Supreme Court rendered itself thus:-

“60. Accordingly, article 50(2) of the Constitution on the right to a fair trial imposes a duty on the court to guarantee the parties to contempt proceedings procedural justice by evaluating the evidence brought forth by all parties. We note that, while there exists no fixed content to the duty to afford procedural fairness, the fairness of procedure depends on the nature of the matters in issue and that would constitute a reasonable opportunity for parties to present their cases in any given circumstance. Procedural fairness in the administration of justice involves the fair hearing rule and the rule

against bias. The fair hearing rules require a decision maker to *inter alia* afford a person an opportunity to be heard before making any decision affecting his/her interests.

61. Likewise, procedural fairness in decision-making requires courts not to deprive any person of their right without due process of the law, a fundamental precept that implies that the right of a person affected by any adverse decision or action is present before a tribunal that pronounces judgment upon the question of life, liberty, or property in its most comprehensive sense, to be heard by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved.

64. From the foregoing, courts are required to adhere to the principles of procedural fairness and due process in the administration of justice. The question that begs therefore is, did the Court of Appeal have a right to ignore deliberately the responses placed before it?

70. The Court of Appeal like all courts in Kenya, is required to adhere to the principles of procedural fairness and due process when dispensing justice. Therefore, when considering the contempt proceedings, the court did not have a right to deliberately ignore the appellants' defenses or responses. Such action violates the principle of procedural fairness and due process, which require meaningful participation in matters before the court. We, therefore, find that the Court of Appeal did not have the jurisdiction to deliberately ignore the defenses or responses by the 1st and 2nd appellants and by doing so, fell into fatal error.”

24. Having said that, the court has reviewed the Appellant's replying affidavit. In paragraph 4 of the affidavit, the Respondent's Legal Officer depones:-

“4. THAT the circumstances surrounding the instant application are that subsequent to the Court's Order issued on the 8th June 2023 which were later confirmed on the 10th August 2023, the respondent through its branch manager, one

Sara Onsongo reached out to one of the applicant's directors, namely, John Maina to go and collect the two wood planning machines which he refused. This fact was duly communicated to me via email correspondence on the 13th June 2023 at 2.37 pm. (See annexure marked RS-1 being copy of email correspondence dated 13th June 2023)."

25. From the affidavit, the Appellant's averment is that the Respondent had been requested through its Director, John Maina, to collect the machines, but failed to do so. The request was allegedly made by the Appellant's Branch Manager, Sara Onsongo.

26. The Appellant also avers that it was not properly served with the court order or the application that gave rise to the contempt proceedings. In ***Arphaxad Mutiso Mutisya v Rose Katwanga [2021] KEELC 3111 (KLR)***, the court held that:-

"34. In the Ruling of the trial court, the Magistrate held at page 8 of the Ruling as follows:

“In this case it has been submitted that the alleged contemnor was served. The counsel for the applicant has relied on the affidavit of Joseph Mutinda Munyasia sworn on 5th April 2019. In that affidavit, the process server deposed that he received a copy of order and served upon the 2nd Defendant who received, but declined to sign. The process server did not state who told him that the person he served was the intended recipient. The counsel for the 2nd Defendant submitted that the 2nd Defendant was not aware nor party to the proceedings in court. The affidavit by the process server lacks particulars. Furthermore, the 2nd Defendant alleges that she is not the one mentioned in the pleadings....”

43. On the evidence that was placed before the trial court, I am satisfied that no evidence was adduced to show that the Respondent disobeyed the orders of the court. Consequently, the trial Magistrate’s order dismissing the contempt Application dated 26th March, 2019 is upheld.”

27. It is not in doubt that the trial court did not make any reference to the Appellant's submissions in its ruling. In failing to do so, the trial court failed to observe the principle of procedural fairness. The failure to adhere to these principles vitiated the proceedings.

28. Flowing from the above, I find that the appeal is merited and it is hereby allowed and the orders set aside. The file is remitted to the lower court for hearing of the application dated 13th November 2024 before a different Magistrate. Costs shall be in the cause.

Dated, signed, and delivered at Kakamega, this 12th day of February 2026.

**A. C. BETT
JUDGE**

In the presence of:

Mr. Mulama holding brief for Mr Abok for the Appellant

Mr. Adeya holding brief for Mr Amasakha for the Respondent

Court Assistant: Polycap