



Dari Limited & 5 others v East African Development Bank & 2 others (Commercial Case E469 of 2019) [2026] KEHC 2534 (KLR) (Commercial and Tax) (19 February 2026) (Ruling)

Neutral citation: [2026] KEHC 2534 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E469 OF 2019
JWW MONG'ARE, J
FEBRUARY 19, 2026**

BETWEEN

**DARI LIMITED 1ST PLAINTIFF
RAPHAEL TUJU 2ND PLAINTIFF
MANO TUJU 3RD PLAINTIFF
ALMA TUJU 4TH PLAINTIFF
YMA TUJU 5TH PLAINTIFF
SAM COMPANY LIMITED 6TH PLAINTIFF**

AND

**EAST AFRICAN DEVELOPMENT BANK 1ST DEFENDANT
MUNIU THOITHI 2ND DEFENDANT
GEORGE WERU 3RD DEFENDANT**

RULING

Introduction and Background

1. On 30th July 2020, the court (Kasango J.,) ordered that the 2nd – 5th Plaintiffs (“the Plaintiffs”) should show cause why they should not be committed to civil jail for contempt of the court’s orders of 2nd March 2020 and 13th March 2020. This has been done through their replies dated 29th April 2025. They have also filed the application dated 10th March 2025 that seeks to review, vary vacate and/or set aside the said order of 30th July 2020. This application is supported by grounds on its face and the



- supporting affidavit of the 2nd Plaintiff sworn on 10th March 2020 and it is opposed by the Defendants through the replying affidavit of the 1st Defendant's Principal Legal Officer sworn on 17th March 2020.
2. The Plaintiffs state that their failure to comply with the court orders of 2nd March 2020 and 13th March 2020 was due to a severe medical emergency involving the 2nd Plaintiff, who is also the father of the 3rd, 4th, and 5th Plaintiffs. That in 12th February 2020, the 2nd Plaintiff was involved in a serious road accident near Kijabe where he was initially treated at Kijabe Hospital, then airlifted to Karen Hospital in Nairobi, where he was in a medically induced coma until 20th February 2020. Due to the severity of his injuries, he was flown to the Wellington Hospital in London for emergency surgery, accompanied by the 3rd and 4th Plaintiffs. That the 2nd Plaintiff was hospitalized in the UK from 20th February to 7th March 2020, then returned to Karen Hospital until his discharge on 26th March 2020.
 3. As such, the Plaintiffs aver that the 2nd Plaintiff was incapacitated, in a coma, and hospitalized during the period the court orders were issued, that the 2nd and 3rd Plaintiffs were out of the country attending to their father in the UK during the critical dates and that the 5th Plaintiff was emotionally distressed and caring for her father locally. The Plaintiffs also claim they were not informed of the court orders by their counsel, despite counsel being present in court on the relevant dates and that they were preoccupied with the medical crisis and not in a position to receive or comprehend legal communications. They apologize unreservedly to the court and clarify that their non-compliance was not a blatant refusal to obey orders, but due to circumstances beyond their control. The 3rd, 4th and 5th Plaintiffs state that they are directors of the 1st and 6th Plaintiffs but do not engage in daily operations and that the 2nd Plaintiff is the controlling mind of the companies.
 4. The Plaintiffs argue that the contempt ruling of 30th July 2020 was made without considering their medical emergency and they claim they were condemned unheard, violating their constitutional rights under Articles 25 and 50 of *the Constitution*. For these reasons, they urge that the contempt orders be purged and that no sentencing or civil jail commitment be issued, given the valid and compelling reasons for their non-compliance.
 5. The Plaintiffs' application is a mirror reflection of the reasons and grounds set out above and therefore I will not rehash the same. In their response, the Defendants depone that that contempt of court is a preliminary issue that must be determined in limine to uphold the court's authority and public confidence in the Judiciary. That the application is fatally delayed & an afterthought as it seeks to review an order made on 30th July 2020, 1,684 days later which delay is itself inordinate and a basis for dismissal. They claim that the review application was only filed two days before the Plaintiffs were scheduled to appear in court to show cause why they should not be committed for contempt and that this timing suggests it is a dilatory tactic to avoid the contempt proceedings. They accuse the Plaintiffs of being persistently contemptuous including denying Receivers access to company premises and records despite multiple court orders, using police presence to block the Receivers, unilaterally closing the business and removing assets and filing multiple procedural applications for recusal of judges, judicial complaints and mediation, instead of complying with orders.
 6. The Defendants rejects the Plaintiffs' explanations as "red herrings" noting that the Plaintiffs were aware of the orders and chose to challenge them instead of complying and they contend that parties who are in blatant and continuous contempt of court are not entitled to be heard by the court until they purge their contempt. They urge the court to dismiss the application with costs, and to prioritize the hearing of the contempt proceedings to vindicate the court's authority and the rule of law.
 7. Even though the court directed that parties file written submissions on the Notice and the application, none are on record.



Analysis and Determination

8. From the pleadings, the court is being called upon to determine whether the orders of 30th July 2020 should be set aside and whether the Plaintiffs have shown cause why they should not be committed to civil jail for contempt of the court's orders. That the Plaintiffs were found guilty of contempt of court is not in doubt. In the Ruling delivered by this Court (Kasango J.,) on 30th July 2020, it was found that the Plaintiffs "...were served with the orders made on 2nd and 13th March 2020 which orders were willfully disobeyed. They are guilty of contempt of court..." They cannot therefore be heard to say that they were not aware of the court's orders or that they are not in contempt. The only issue before me, after taking the Plaintiffs' mitigation is to determine whether I should commit them to civil jail (see *Nduva & 3 others v Ndar & 3 others; Ng'ang'a (Intended Interested Party)* (Civil Case 24 of 2017) [2025] KEHC 3876 (KLR))
9. Having gone through the Plaintiffs' explanations in their replies and application and juxtaposed the same with the Defendants' affidavit, I am not inclined to find any favour in respect of the Plaintiffs for a number of reasons. First, the Plaintiffs' primary defense in their responses rests on two main points: Lack of personal service as they argue the court orders were not personally served on them and the 2nd Plaintiff's medical emergency. However, this court has already found that the Plaintiffs' counsel were present in court and therefore service was sufficient. Their affidavits before the Court of Appeal also point out that they were personally aware of the court's orders.
10. Second, on the 2nd Plaintiff's severe accident and medical condition rendering him incapable of complying with or instructing compliance with the court orders, I note that the evidence, including this court's findings of 30th July 2020 shows a pattern of disobedience during and after this period of medical emergency. The Receivers' affidavits on record detail active, specific defiance throughout March, April, and May 2020, being denied access on 3rd, 4th, 9th, 13th and 17th March; 3rd and 22nd April and; 8th, 26th, and 29th May. The court found that it is the Plaintiffs who directly instructed their employees or security personnel to deny the joint Receiver Managers to access the 1st Plaintiff's premises in contempt of the court's orders. This evidence by the 3rd Defendant has never been refuted and negates the Plaintiffs' argument that they were incapacitated or incapable of issuing defiant instructions to their employees to disobey the court's orders.
11. Third, during this same period, the Plaintiffs' advocates were actively filing multiple sophisticated court applications for review, recusal and judicial complaints. This demonstrates the Plaintiffs' legal team was fully functional and receiving instructions from the Plaintiffs, belying a claim of total incapacity and I further note that nowhere in the said applications do the Plaintiffs mention that they are incapacitated by a medical emergency. I am in agreement with the Defendants therefore that this medical emergency as a reason for not complying with the court's orders is being raised for the first time in this application and I am in further agreement that it is being raised quite late in the day. If it were the true cause of non-compliance in 2020, one would expect it to have been the primary and immediate defense raised in the original contempt proceedings in 2020, not introduced years later as an afterthought. It is therefore my finding that their application dated 10th March 2025 has no legs to stand on and falls at this point.
12. In summary, based on the Defendants' filed and uncontroverted evidence, the Plaintiffs' actions during the subject period show deliberate, instructed, and active resistance, not passive incapacity. The medical emergency defense, in this context, appears to be a tactical, belated explanation that does not align with the established factual record of contumacious conduct. While I can agree that a life-threatening emergency is a compelling human circumstance, the evidence as presented suggests it is not the cause



of the contempt but a subsequent event being used to explain away an already-existing and well-documented pattern of disobedience.

Conclusion and Disposition

13. The conclusion I have arrived at, after careful consideration of the matter, is that the Plaintiffs have failed to sufficiently explain or purge their contempt and they must be punished for the disobedience of the court orders. Consequently, I hereby sentence the Plaintiffs to each pay a fine in the sum of Kshs. 100,000.00, which should be paid within a period of 90 days from the date of this ruling, failing which they shall be committed to civil jail for a period of six months. For the avoidance of doubt, the Plaintiffs' application dated 10th March 2025 is dismissed with costs.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF FEBRUARY 2026

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J.W.W. MONGARE

JUDGE

In the Presence of

1. Mr. Nyamodi for the Plaintiffs/Applicants.
2. Mr. Kahura for the Defendant/Respondent.
3. Amos - Court Assistant

