

**THE REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**CAUSE NO. E426 OF 2023**

**LYNDON JOSEPH D’SOUZA .....**  
**APPLICANT**

**VERSUS**

**STEPHANIE WAMBUI NJOROGE T/A**  
**STEPHANIE RACHEL WAMBUI & CO**  
**ADVOCATES.....RESPONDENT**

**RULING**

1. Before this Court is the Applicant’s Notice of Motion dated 9<sup>th</sup> April 2025 seeking that the Respondent be cited and punished for contempt of court for alleged disobedience of the orders issued on 19<sup>th</sup> September 2024, compelling her to remit the balance of the purchase price in the sum of Kshs. 7,223,150/= . The Applicant further prays that the Respondent be committed to civil jail for six (6) months or until she purges the alleged contempt and that she be ordered to appear before this Court.
2. The application is supported by the affidavit of Gulam Ali. The Applicant’s case is that the Respondent, who acted as his advocate in a land transaction involving L.R. No. Laikipia/Daiga/Ethi Block 2/105, received the purchase price in her client account but failed to remit the balance to him despite the transfer of the property to the purchaser.

3. It is the Applicant's position that pursuant to a settlement agreement dated 24<sup>th</sup> November 2022, the Respondent acknowledged receipt of the funds and undertook to settle the outstanding balance. Upon failure to comply, the Applicant moved the Court and orders were issued on 19<sup>th</sup> September 2024 directing the Respondent to remit the decretal sum. It is alleged that she has deliberately refused to comply.
4. The Respondent opposes the application vide a Replying Affidavit sworn on 21<sup>st</sup> June 2025 and written submissions dated 16<sup>th</sup> October 2025. She admits the existence of the debt but avers that she has paid Kshs. 3,500,000/= and that the outstanding balance stands at Kshs. 7,193,150/= comprising principal, accrued interest and legal fees. She attributes her inability to settle the balance to financial hardship arising from alleged fraud by a third party, serious medical conditions affecting her daughter, and injuries sustained in a road traffic accident.
5. She denies willful disobedience and proposes a structured repayment plan. She further submits that committal to civil jail would violate Section 38 of the Civil Procedure Act and constitutional safeguards.

### **Analysis and Determination**

6. I have considered the application, the affidavits in response and the rival submissions. The issues that fall for determination are:

- i. *Whether the Respondent is in contempt of the orders issued on 19<sup>th</sup> September 2024.*
- ii. *Whether the Respondent should be committed to a civil jail.*

7. The jurisdiction of this Court to punish for contempt is anchored in Section 5(1) of the Judicature Act, which provides:

***“The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of the subordinate courts.”***

8. Although the Contempt of Court Act was declared unconstitutional in **Kenya Human Rights Commission v Attorney General & Another [2018] eKLR**, the Court’s inherent jurisdiction and statutory power under Section 5 of the Judicature Act remain intact.
9. It is settled law that contempt proceedings are quasi-criminal in nature. In **Gatharia K. Mutikika v Baharini Farm Ltd [1985] KLR 227**, the Court of Appeal held that the standard of proof is higher than proof on a balance of probabilities though not as high as proof beyond reasonable doubt.

10. The elements to be established were succinctly set out in **Samuel M. N. Mweru & Others v National Land Commission & 2 Others [2020] eKLR**, namely, that the order was clear, valid and binding, that the alleged contemnor had knowledge of it, that there was a breach, and that the breach was deliberate and willful.
11. In the present case, there is no dispute that this Court issued orders on 19<sup>th</sup> September 2024, compelling payment of Kshs. 7,223,150/=. The Respondent does not deny knowledge of the order. She also does not deny that the decretal sum remains unpaid in full. The central issue is whether the failure to comply amounts to deliberate and contumacious disobedience.
12. The Respondent has placed before the Court evidence of partial payment amounting to Kshs. 3,500,000/=. She has also explained the circumstances said to have impaired her financial ability.
13. While hardship does not excuse disobedience of court orders, contempt requires proof of willful defiance and deliberate disobedience must be demonstrated clearly - See **Philip Chepkwony v Benjamin Tarus & 4 Others (2019) eKLR**.
14. The Respondent's conduct, viewed objectively, reflects acknowledgement of the Court's authority and partial compliance rather than outright defiance. The failure to settle the full decretal sum appears to stem from financial

incapacity rather than deliberate disregard of the Court's authority.

15. Contempt jurisdiction exists to safeguard the authority and dignity of the Court, not to serve as a substitute for execution proceedings. The Court must guard against converting contempt proceedings into a coercive debt recovery mechanism.
16. I am therefore not satisfied that the Applicant has discharged the burden of proving willful and deliberate disobedience to the required standard.
17. Execution by way of warrants of arrest is provided for under Section 38 (d) of the Civil Procedure Act, which provides:  
that:

***“Subject to such conditions and limitations as may be prescribed, the court may, on the application of the decree-holder, order execution of the decree; (d) by arrest and detention in prison of any person.”***

18. This provision further contemplates that where the decree is for payment of money, execution by detention in prison is not allowed unless the court is satisfied that there is bad faith, deliberate refusal to pay despite the ability to do so, or breach of fiduciary duty.

19. Order 22 Rule 34 of the Civil Procedure Rules further requires the Court to record reasons before ordering detention and to be satisfied that the debtor is acting to obstruct or delay execution or has means but refuses to pay.
20. It is trite law that committal to civil jail is a measure of last resort and must not be used where inability rather than refusal is demonstrated.
21. The Respondent has demonstrated partial compliance and financial hardship. There is no evidence that she is likely to abscond, conceal assets, or act in bad faith to defeat execution. While the Respondent remains indebted and bound by this Court's orders, the Applicant has not demonstrated deliberate and willful disobedience to the standard required in contempt proceedings.
22. I am not persuaded that the Respondent ought to be committed to civil jail.
23. The upshot is that the Notice of Motion dated 9<sup>th</sup> April 2025 has no merit and it is therefore dismissed.
24. Costs of the application shall be in the cause.

It is so ordered.

**RULING** delivered virtually, dated and signed at **NAIROBI**

This **12<sup>th</sup>** day of **March** 2026.

**P.M. MULWA**  
**JUDGE**

**In the presence of:**

*Mr. Gulam* for Applicant

*Mrs. Khayisi* for Respondent

Court Assistant: *Carlos*