



*Respondent/Applicant's Motor Vehicle Registration Number KDP 892R TOYOTA HIACE VAN from the custody and/or control of the Interested Party, Icon Auctioneers, or any agent, servant, or assigns acting on their instructions.*

4. *This Honourable Court be pleased to find and hold that the Claimant ALEXANDER JOHN FRANK STUBBS, its Advocates on record Murage Juma & Company, and the Interested Party Icon Auctioneers, have willfully and deliberately disobeyed the lawful orders of this Honourable Court issued on 22<sup>nd</sup> September 2025 and varied on 24<sup>th</sup> September 2025, and are therefore in contempt of Court.*
5. *Upon finding of contempt, the Claimant, its said Advocates, and the Proprietor/Officer in Charge of Icon Auctioneers be summoned to appear before this Honourable Court and show cause why they should not be punished for contempt of Court, including but not limited to imprisonment, sequestration of property, and/or fines, pursuant to the Judicature Act and the inherent powers of the Court.*
6. *In addition, and without prejudice to the foregoing, the costs of this Application be awarded to the Respondent/Applicant on a full indemnity basis, personally payable by the Claimant's Advocates and the Interested Party, for instigating and/or*

*participating in unlawful execution in blatant disregard of subsisting Court Orders.*

*7. Such other or further orders be made as this Honourable Court shall deem just and expedient in the circumstances for the ends of justice to be met and the dignity of the Court upheld.*

### **Respondent/Applicant's Case**

- 2 The Applicant avers that vide an application dated 25<sup>th</sup> August 2025, it sought, inter alia, orders for stay of execution of the decree on the basis that the decretal sum together with the taxed costs amounting to Kshs. 2,011,233.67 had already been remitted to the Claimant/Respondent.
- 3 The Applicant avers that on 28<sup>th</sup> August 2025, this Court granted interim stay orders and directed the Claimant/Respondent to file a Replying Affidavit within fourteen (14) days, and the matter was thereafter fixed for mention on 22<sup>nd</sup> September 2025.
- 4 On 22<sup>nd</sup> September 2025, Counsel for the Claimant/Respondent misled the Court from the Bar by asserting that the decretal funds had not been received as the account was allegedly closed and further contended that party-and-party costs belonged exclusively to Counsel and had been irregularly transmitted.

- 5 It is the Applicant's case that based on these averments, the Court directed that half of the decretal sum be deposited in Court by 26<sup>th</sup> September 2025 and scheduled further proceedings for 27<sup>th</sup> October 2025.
  
- 6 The Applicant avers that on 23<sup>rd</sup> September 2025, the Claimant filed a Replying Affidavit sworn on 11<sup>th</sup> September 2025, wherein he admitted receipt of the decretal funds but only contested the statutory deductions made pursuant to Section 49(2) of the Employment Act.
  
- 7 The Applicant avers that the said Replying Affidavit demonstrated that Counsel was fully aware that the decretal sum had already been paid at the time of the mention on 22<sup>nd</sup> September 2025, yet nonetheless misled the Court and thereby influenced the order requiring deposit of half the decretal sum.
  
- 8 Consequently, the Applicant filed an application dated 24<sup>th</sup> September 2025 seeking discharge of the order directing deposit of half the decretal sum in Court. Vide an Order issued on 24<sup>th</sup> September 2025, Hon. Justice Stephen Radido allowed prayer 2 of the motion and reviewed, varied and set aside the orders issued on 22<sup>nd</sup> September 2025, particularly the directive requiring the Respondent/Applicant to deposit half the decretal sum in Court by 26<sup>th</sup> September 2025.

- 9 It is the Applicant's case that the effect of the said order was to discharge the condition requiring deposit of half of the decretal sum as a precondition for stay, thereby leaving the interim stay orders of execution issued on 28<sup>th</sup> August 2025 in full force and effect.
- 10 The Applicant avers that the said Order and the Application were duly served upon the Advocates for the Claimant as well as the Advocates for the Interested Party, the Auctioneers, accompanied by a clear penal notice. Evidence of service and electronic delivery logs were filed on the Court record and, according to the Applicant, the said orders were therefore binding upon all parties with notice thereof.
- 11 The Applicant avers that notwithstanding the existence and clarity of the Court Orders, the Claimant and/or his Advocates proceeded to unlawfully instruct the Interested Party to execute against the Applicant.
- 12 The Applicant states that the Interested Party issued a proclamation notice on 8<sup>th</sup> October 2025 and subsequently attached the Applicant's motor vehicle Registration Number KDP 892R Toyota Hiace Van on 24<sup>th</sup> October 2025, despite having been notified of the Orders issued by the Court on 24<sup>th</sup> September 2025 which had varied the earlier condition.

- 13 The Applicant avers that at the time of attachment, the said motor vehicle was transporting its staff who were undertaking official market activation activities in Mwea, and the attachment compelled them to terminate their journey mid-route, thereby occasioning operational disruption, inconvenience, reputational prejudice and financial loss.
- 14 It is the Applicant's case that the said actions amounted to deliberate and willful disobedience of lawful court orders and constituted a direct affront to the authority, dignity and administration of justice.
- 15 The Applicant avers that the present application is neither frivolous nor an abuse of the Court process as alleged by the Claimant. Rather, it arises from fresh acts of contempt of court orders, specifically the unlawful attachment of the Applicant's motor vehicle on 24<sup>th</sup> October 2025, long after the Court had issued binding orders on 24<sup>th</sup> September 2025 varying the conditional stay and reinstating the stay of execution unconditionally.
- 16 The Applicant states that unlike the earlier applications which dealt with stay and review based on the fact that the decretal sum had already been settled, the present application seeks to cite the Claimant, his Advocates and the Interested Party for deliberate and willful disobedience of lawful and subsisting court orders and to bar the Claimant from enforcing the judgment through attachment

since the decretal sum together with the taxed costs had already been paid.

- 17 In support of this position, the Applicant relies on the decision in ***Teachers Service Commission v Kenya National Union of Teachers & 2 others [2013] eKLR***, where it was affirmed that contempt proceedings are distinct proceedings essential for preserving judicial authority and do not relitigate issues that have already been substantively determined but instead address willful disobedience of Court Orders.
- 18 The Applicant further avers that although judgment was delivered on 9<sup>th</sup> April 2025 in favour of the Claimant in the sum of Kshs. 3,031,275 inclusive of costs, the Claimant's allegation that the Applicant failed to satisfy the decree is false.
- 19 The Applicant states that it fully settled the decretal sum and taxed costs on 22<sup>nd</sup> August 2025, less statutory deductions as required under Section 49(2) of the Employment Act, and proof of payment was annexed to the Application dated 25<sup>th</sup> August 2025.
- 20 The Applicant further avers that the Claimant himself admitted receipt of the decretal sum in his Replying Affidavit sworn on 11<sup>th</sup> September 2025, where he only contested the statutory deductions, and that his present denial of satisfaction is therefore misleading.

- 21 The Applicant avers that it was on the basis of proof that payment had been made that this Court issued interim stay orders on 28<sup>th</sup> August 2025 in order to preserve the *status quo* and prevent unlawful execution.
- 22 The Applicant further avers that although the Court on 22<sup>nd</sup> September 2025 directed deposit of half the decretal sum as a precondition for stay, the said condition was procured through misrepresentation by Counsel for the Claimant who denied receipt of the decretal funds despite full knowledge thereof.
- 23 The Applicant avers that the Claimant's Replying Affidavit sworn on 11<sup>th</sup> September 2025 was intentionally withheld and only filed on 23<sup>rd</sup> September 2025, a day after the alleged misrepresentation was made, thereby demonstrating an intention to mislead the Court and improperly procure the conditional order.
- 24 The Applicant avers that the Claimant's assertion that the stay lapsed due to non-compliance with the condition is factually and legally untenable since on 24<sup>th</sup> September 2025, two days before the purported lapse date, this Court varied the order of 22<sup>nd</sup> September 2025 and expressly discharged the condition requiring deposit of half the decretal sum.

- 25 The Applicant avers that the effect of the variation order was that the stay issued on 28<sup>th</sup> August 2025 remained in force unconditionally, and that the variation order superseded the earlier conditional order under Order 45 of the Civil Procedure Rules.
- 26 The Applicant avers that the Court, in issuing the variation order, exercised its jurisdiction to preserve the status quo and prevent miscarriage of justice and acted consistently with the overriding objective under Sections 1A and 1B of the Civil Procedure Act as read together with Article 159(2) of the Constitution, which prioritize substantive justice. The Applicant states that permitting execution despite satisfaction of the decretal sum and the existence of a subsisting stay would amount to an abuse of the Court process.
- 27 The Applicant avers that the Claimant's contention that he was entitled to resume execution upon expiry of 26<sup>th</sup> September 2025 is legally and factually incorrect since the condition requiring deposit of half the decretal sum had already been nullified by the variation order issued on 24<sup>th</sup> September 2025.
- 28 The Applicant states that the said order was served upon the Claimant's Advocates on 25<sup>th</sup> September 2025 with a penal notice, thereby rendering it binding, and that any execution undertaken thereafter by the Claimant's

Advocates and the Auctioneer constituted prima facie contempt of a valid Court Order.

29 The Applicant further avers that the Claimant has deliberately misled the Court by alleging that attachment was done on 24<sup>th</sup> September 2025, whereas the record shows that a proclamation notice was issued on 8<sup>th</sup> October 2025 and the motor vehicle was eventually attached on 24<sup>th</sup> October 2025, long after the variation order had been issued and served. According to the Applicant, the attachment therefore amounted to deliberate defiance of the court order issued on 24<sup>th</sup> September 2025.

30 It is the Applicant's case that the application was necessitated solely by the Claimant's unlawful conduct and failure to comply with valid Court Orders.

31 The Applicant further avers that any delay in the matter has been occasioned by the Claimant's insistence on proceeding with execution despite the fact that the decretal sum together with the assessed costs had already been paid.

32 The Applicant avers that allowing the Claimant to proceed with execution after acknowledging receipt of the decretal sum would expose the Applicant to substantial financial prejudice by compelling it to satisfy the same decree

twice, an outcome that is manifestly unjust and contrary to the principles of natural justice and equity.

33 The Applicant therefore avers that the attachment of its motor vehicle, undertaken while it was engaged in transporting employees on official duties, caused serious operational disruption, financial loss and reputational damage and was carried out in deliberate defiance of the Court Orders issued on 24<sup>th</sup> September 2025, thereby necessitating the present application in order to vindicate the authority of this Court and prevent continued abuse of its process.

34 The Applicant urged this Court to invoke its contempt jurisdiction and cite the Claimant, his Advocates and the Interested Party for contempt of the Orders issued on 24<sup>th</sup> September 2025, as they had full knowledge of the said orders yet deliberately and wilfully disobeyed them.

### **Respondent's Case**

35 In opposition to the application, the Respondent filed a replying affidavit dated 10<sup>th</sup> November 2025.

36 The Respondent avers that the impugned Application is frivolous, misconceived, incompetent and an abuse of the court process, being the Applicant's third repetitive motion seeking to relitigate matters which have already been

conclusively addressed through earlier proceedings and conditional orders of stay.

- 37 The Respondent avers that the application offends the principle of *res judicata* and the finality of interlocutory orders, since the Court has already pronounced itself on the question of stay through conditional directions issued on 22<sup>nd</sup> September 2025 and subsequent directions given on 24<sup>th</sup> September 2025.
- 38 The Respondent avers that judgment was delivered on 9<sup>th</sup> April 2025, awarding it the sum of Kshs. 3,031,275 inclusive of costs.
- 39 The Respondent avers that the Applicant, having failed to satisfy the decree, moved the Court through an Application dated 25<sup>th</sup> August 2025, whereupon the Court on 28<sup>th</sup> August 2025 granted a purely interim stay of execution pending mention.
- 40 The Respondent avers that on 22<sup>nd</sup> September 2025, upon *inter partes* consideration, the Court calibrated the interim stay by directing that the stay would subsist only on condition that the Applicant deposits one-half of the decretal sum in Court on or before 26<sup>th</sup> September 2025.
- 41 The Respondent avers that the Applicant wholly failed and neglected to comply with the said condition within the stipulated time, with the result that the stay automatically

lapsed by operation of law and no protection subsisted thereafter.

- 42 The Respondent further avers that instead of complying with the Court's directive, the Applicant filed yet another application dated 24<sup>th</sup> September 2025 seeking review and/or further stay, which the Court certified as urgent and directed to be served for inter partes hearing on 27<sup>th</sup> October 2025.
- 43 The Respondent avers that the very act of filing the said second Application constitutes an unequivocal admission by the Applicant that the earlier stay was conditional and time-bound, and that its non-compliance had rendered it inoperative.
- 44 The Respondent avers that under Order 42 Rule 6(2) of the Civil Procedure Rules, 2010, a stay of execution pending appeal or otherwise must be conditional and failure to satisfy the prescribed terms renders such stay spent and incapable of revival.
- 45 The Respondent further avers that Rule 32 of the Employment and Labour Relations Court (Procedure) Rules, 2016 empowers the Court to grant conditional stays in order to balance the competing rights of the parties, and where such conditions remain unfulfilled, the decree-holder's entitlement to execution automatically crystallizes.

- 46 The Respondent therefore avers that upon expiry of 26<sup>th</sup> September 2025 without compliance with the deposit condition, the Respondent became entitled as of right to resume execution, and any subsequent steps taken towards execution were lawful, regular and fully consistent with the decree issued by the Court.
- 47 The Respondent avers that the attachment of the Applicant's motor vehicle by the Interested Party on 24<sup>th</sup> September 2025 was undertaken pursuant to duly issued warrants in execution of a subsisting decree at a time when no operative stay order existed to restrain enforcement.
- 48 The Respondent further avers that as at 24<sup>th</sup> September 2025, the Applicant had neither deposited any sum nor obtained any fresh stay capable of binding the decree-holder or the auctioneers.
- 49 The Respondent avers that the Court's directions issued on 24<sup>th</sup> September 2025 merely certified the Applicant's second motion as urgent and directed service for inter partes hearing, and did not grant any new or continuing stay of execution. In those circumstances, the Respondent maintains that execution proceeded strictly within the ambit of the law and cannot be construed as contempt or disobedience of any Court order.

- 50 It is the Respondent's case that the Applicant's own procedural conduct confirms this position, since by filing the second application seeking "further stay," the Applicant effectively acknowledged that whatever earlier stay existed had already expired.
- 51 The Respondent also avers that the Applicant had sought orders for stay of execution pending the hearing and determination of the said Application, and that since those orders were not granted, the Respondent understood that no stay was in place and therefore proceeded with execution.
- 52 The Respondent avers that in order to cite a party for contempt, the order alleged to have been breached must be clear, unequivocal and unambiguous.
- 53 The Respondent contends that having approached the Court afresh for discretionary relief, the Applicant cannot now allege contempt in respect of an execution that was lawful and undertaken in the absence of any subsisting stay order.
- 54 The Respondent further avers that the doctrine of approbation and reprobation prohibits a party from blowing hot and cold within the same proceedings. According to the Respondent, the Applicant cannot simultaneously admit that the previous stay was

inadequate by seeking further stay orders and thereafter assert that the same stay remained subsisting.

- 55 The Respondent avers that any inconvenience allegedly occasioned by the lawful attachment of the Applicant's motor vehicle is self-inflicted and flows directly from the Applicant's refusal to honour the Court's order requiring deposit of the decretal sum.
- 56 The Respondent further avers that a judgment debtor who remains in willful default of a deposit condition cannot invoke equity to shield itself from the natural consequences of its own disobedience.
- 57 The Respondent avers that the Applicant has not demonstrated any irreparable or irremediable loss and instead seeks to weaponize the Court's contempt jurisdiction in order to deflect scrutiny from its persistent non-compliance and delay the satisfaction of the decree.
- 58 The Respondent avers that the present Application is the Applicant's third in a series of dilatory maneuvers designed to forestall execution without addressing the underlying decretal obligation.
- 59 The Respondent further avers that repeated filing of substantially identical motions constitutes an abuse of process and unnecessarily clogs the wheels of justice contrary to Article 159(2)(b) of the Constitution and the

overriding objective under Sections 1A and 1B of the Civil Procedure Act.

- 60 It is the Respondent's case that the application is a gross abuse of the court process, calculated to delay, obstruct and defeat justice, and urges the Court to dismiss it.

### **Respondent's/Applicant's Submissions**

- 61 The Applicant submitted that it is trite law that Court orders are binding commands and not mere suggestions, and must be obeyed unless lawfully set aside or varied. It is submitted that disobedience of Court orders undermines the rule of law and the administration of justice.

- 62 The Applicant submitted that the guiding law on enforcement of Court orders is Section 5(1) of the Judicature Act, which confers inherent power upon courts to enforce compliance with their lawful orders through contempt proceedings. The provision states: *"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 such power shall extend to upholding the authority and dignity of subordinate courts."*

- 63 The Applicant further relied on Black's Law Dictionary (9th Edition) which defines contempt as: *"Conduct that defies the authority or dignity of a court. Because such conduct*

*interferes with the administration of justice, it is punishable usually by fine or imprisonment.” This definition was echoed in the decision of **Republic v County Secretary, Nairobi City County & another; Litswa & another (Exparte Applicants) (Suing as the Legal Representatives of the Estate of Hermaton Litswa) [2025] KEHC 9339 (KLR).***

- 64 The Applicant further submitted that the jurisdiction of courts to punish for contempt was affirmed by the Supreme Court in **Githiga & 5 others v Kiru Tea Factory Company Ltd [2023] KESC 41 (KLR)** “Courts possess the inherent power to enforce compliance with their lawful orders through sanctions imposed through contempt of court... the instructive provision remains Section 5(1) of the Judicature Act which grants the High Court and the Court of Appeal the power to punish for contempt.”
- 65 The Applicant submitted that the jurisdiction of the superior courts to punish litigants for contempt of court when they fail or refuse to obey court orders is aimed at protecting the dignity and legitimacy of the courts. The purpose of contempt jurisdiction is to protect judicial legitimacy, as emphasized in the case of **Kenya Tea Growers Association v Francis Atwoli & 5 others [2012] eKLR.**

66 The Applicant submitted that the applicable test in contempt proceedings was set out in **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR**, where the Court held that: *“.....In order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) knowledge of these terms by the respondent, and (iii) failure by the respondent to comply with the terms of the order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities.”*

67 The Applicant submitted that the Court record clearly demonstrates the existence of valid and binding orders. O

68 The Applicant submitted that on 28<sup>th</sup> August 2025, the Court granted interim stay orders and directed the Claimant to file a replying affidavit within 14 days, with the matter scheduled for mention on 22<sup>nd</sup> September 2025. On 22<sup>nd</sup> September 2025 the Court imposed a condition requiring deposit of half the decretal sum by 26<sup>th</sup> September 2025, which was premised on representations that the decretal sum had not been received.

69 It is submitted that on 24<sup>th</sup> September 2025, upon the Applicant’s application dated the same date, the Court reviewed and set aside the condition requiring deposit of

half the decretal sum. According to the Applicant, the variation order discharged the precondition but left the underlying interim stay intact, thereby rendering any execution *void ab initio*.

70 It is the Applicant's submission that the court orders issued on 24<sup>th</sup> September 2025 were clear, unambiguous and binding, and that execution remained stayed without any operative condition.

71 It is further submitted that the Claimant's interpretation that the stay had lapsed ignores the explicit variation and the principle under Order 42 Rule 6(3) of the Civil Procedure Rules that conditional stays do not automatically lapse where the conditions are varied or removed.

72 On knowledge of the order, the Applicant submitted that the Claimant and his advocates had full knowledge of the Orders of 28<sup>th</sup> August 2025 and 24<sup>th</sup> September 2025. It referred to the email correspondence dated 2<sup>nd</sup> September 2025 evidencing service of the Orders issued on 28<sup>th</sup> August 2025, and email correspondence dated 25<sup>th</sup> September 2025 evidencing service of the Orders issued on 24<sup>th</sup> September 2025.

73 The Applicant further submitted that after the Interested Party proclaimed the Applicant's motor vehicle on 9<sup>th</sup> October 2025, its Advocates issued a letter dated 9<sup>th</sup>

October 2025 notifying both the Claimant's Advocates and the Interested Party of the subsisting court orders. Additionally, its Advocate, Mr. Paul Kisala, communicated the existence of the court orders through telephone calls to both the Interested Party and the Claimant's Advocates. Despite these notifications, the Interested Party proceeded with the attachment upon instructions from the Claimant's Advocates.

74 The Applicant therefore submitted that the Claimant, his Advocates and the Interested Party were fully aware of the subsisting Court Orders but deliberately chose to disregard them.

75 On failure to comply, the Applicant submitted that despite the existence of valid stay orders issued on 28<sup>th</sup> August 2025 and 24<sup>th</sup> September 2025, the Claimant, his Advocates and the Interested Party proceeded to attach the Applicant's motor vehicle even after the Applicant had settled the decretal sum together with the taxed costs.

76 The Applicant submitted that the Respondents have not denied knowledge of the orders, and that such silence constitutes acknowledgment under Section 112 of the Evidence Act. It cited ***Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR*** where the Court emphasized that: *"It is a crime unlawfully and intentionally*

*to disobey a court order. This type of contempt of court is part of a broader offence, which can take many forms, but the essence of which lies in violating the dignity, repute or authority of the court. The offence has in general terms received a constitutional 'stamp of approval,' since the Rule of Law - a founding value of the Constitution - 'requires that the dignity and authority of the courts, as well as their capacity to carry out their functions, should always be maintained.'*

- 77 The Applicant submits that the conduct of the contemnors plainly demonstrates that they were, at all material times, aware of the orders of 28<sup>th</sup> August 2025 and 24<sup>th</sup> September 2025, and that their failure to comply was willful, deliberate, and *mala fide*. There is no evidence of any genuine belief in justification; instead, the actions reflect a calculated defiance, including demands for additional payments post-attachment.
- 78 It is the Applicant's submission that it has satisfied the threshold for citing the Claimant, his Advocates, and the Interested Party for contempt of court. This court is properly seized of jurisdiction to punish the contemnors in order to uphold its authority and the rule of law, as failure to do so would encourage similar violations and weaken judicial enforcement.

- 79 On costs, the Applicant submitted that costs should follow the event as provided under Section 27(1) of the Civil Procedure Act. The instant Application was necessitated by the conduct of the Claimant, his Advocates and the Interested Party who, despite being served with the Orders issued on 24<sup>th</sup> September 2025, proceeded to attach the Applicant's motor vehicle in blatant disregard of those Orders which were clear, unambiguous and binding. The Applicant was thus compelled to instruct its Advocates to institute the present Application to cite the Respondents for contempt of Court, and consequently the Respondents should bear the costs of instituting and prosecuting the Application.
- 80 The Applicant submitted that it made attempts to resolve the matter outside Court but the Respondent refused to release the motor vehicle and ignored all requests and demands for its release, thereby forcing the Applicant to seek the Court's intervention at considerable cost.
- 81 It is the Applicant's submission that it has incurred substantial costs to prosecute this Application due to the Claimant's, his Advocates', and the Auctioneers' willful contempt of Court Orders and abuse of the Court process.
- 82 The Applicant urged this court to allow the Application with costs to the Applicant on a full indemnity basis, personally payable by the Claimant's Advocates and the

Interested Party, as their actions directly precipitated this litigation.

### **Claimant/Respondent's Submissions**

- 83 The Respondent submitted on two issues: whether there existed a clear, unequivocal and unambiguous order of this Honourable Court in force on 24<sup>th</sup> October 2025 restraining execution; and whether the affidavits sworn by the Advocate on record are procedurally competent and admissible.
- 84 On the first issue, the Respondent submitted that the foundation of any contempt proceedings is the existence of a clear, precise, and unequivocal order of the Court which was in force at the time of the alleged disobedience. It is trite that contempt jurisdiction, being quasi-criminal in nature, cannot be invoked in circumstances of ambiguity, uncertainty, or where the order complained of is capable of more than one reasonable interpretation.
- 85 The Respondent submitted that contempt proceedings can only arise where there exists a clear, precise and unequivocal order of the Court which was in force at the time of the alleged disobedience. It was submitted that the jurisdiction to punish for contempt is quasi-criminal in nature and must therefore be exercised with great caution

and only where the terms of the order are clear and leave no room for doubt.

86 He submitted that in ***Mutitika v Baharini Farm Ltd[1985] eKLR***, the Court of Appeal held that the standard of proof in contempt proceedings is higher than on a balance of probabilities and that guilt must be proved with strictness consistent with the gravity of the charge. The Court further emphasized that where the language of an order is imprecise or capable of different interpretations, a finding of contempt cannot be sustained and any ambiguity must be resolved in favour of the alleged contemnor.

87 The Respondent further submitted on ***Katsuri Limited v Kapurchand Depar Shah [2016] eKLR***, where the Court held that contempt proceedings, being quasi-criminal, should only be invoked in the clearest of cases and that an applicant must establish that the order was clear and binding, that the alleged contemnor had knowledge of it, that there was a breach of the order, and that such breach was deliberate and wilful.

88 It was submitted that in the present matter, the order issued on 22<sup>nd</sup> September 2025 granting stay of execution was expressly conditional upon the deposit of half of the decretal sum by 26<sup>th</sup> September 2025. Such conditional orders are mandatory in nature and failure to comply

renders the stay inoperative automatically without the need for a further order of the Court.

- 89 The Respondent submitted that it is not disputed that the Respondent/Applicant failed to deposit the required sum within the stipulated time. Consequently, upon lapse of the deadline, the conditional stay automatically ceased to exist.
- 90 The Respondent further submitted that the Applicant relied on the order issued on 24<sup>th</sup> September 2025 arguing that this order reinstated an unconditional stay of execution. However, a plain reading of that order does not reveal any express restraining language.
- 91 It was submitted that the order of 24<sup>th</sup> September 2025 did not contain the operative words ordinarily associated with injunctive or restraining relief, such as “execution is hereby stayed” or “the parties are restrained from proceeding with execution pending further orders.” Its terms were limited to allowing Prayer 2 and directing service and response within specified timelines.
- 92 The Respondent submitted that contempt jurisdiction does not permit the Court to imply or infer restraining terms into an order where none are expressly stated as held in ***Ochino & another v Okombo & 4 others [1989] eKLR.***

- 93 It is the Respondent's submission that the Applicant's contention that allowing Prayer 2 automatically reinstated a stay is, at best, a legal argument as to the effect of the order. It is not an express term contained within the four corners of the Court's directive. Where the legal effect of an order is arguable or requires construction, the threshold for contempt is not met. He placed reliance on ***Teachers Service Commission v Kenya National Union of Teachers & 2 others [2013] eKLR***, where the Court held that contempt jurisdiction is a grave invocation of judicial power intended to safeguard the rule of law and should not be used where the alleged breach turns on an arguable interpretation of an order.
- 94 The Respondent therefore submitted that the alleged restraining effect of the order of 24<sup>th</sup> September 2025 is not express but is derived from the Applicant's interpretation of its legal consequences. That very need for interpretation demonstrates the absence of the clarity required for contempt.
- 95 Accordingly, the Respondent submitted that as at 24<sup>th</sup> October 2025, there was no express, unequivocal, and unambiguous order in force restraining execution. At most, there existed a procedural order allowing review and directing further steps toward inter partes hearing. In circumstances where the order relied upon does not expressly restrain execution and where reasonable

alternative interpretations exist as to its effect, the invocation of contempt jurisdiction is legally unsustainable.

- 96 It is the Respondent's submission that the Applicant has failed to establish the first and most essential element of contempt, namely, the existence of a clear and binding order prohibiting execution on 24<sup>th</sup> October 2025. In the absence of such clarity, the Application must fail at the threshold stage.
- 97 On the second issue, the Respondent submitted that the affidavits sworn by the Advocate on record are procedurally incompetent and inadmissible. An affidavit constitutes evidence and should ordinarily be sworn by a person who has personal knowledge of the facts deponed to or who discloses the source of information and grounds of belief where the deposition is based on information.
- 98 The Respondent submitted that when an advocate swears an affidavit on contested factual matters, the advocate improperly steps into the evidential arena and effectively becomes a witness in the proceedings, which is inconsistent with the advocate's role as counsel.
- 99 The Respondent submitted that Rule 8 of the Advocates (Practice) Rules prohibits an advocate from appearing in a matter in which he may be required to give evidence, whether verbally or by affidavit, except on purely formal or

non-contentious matters. He cited ***Regina Waithira Mwangi Gitau v Boniface Nthenge [2015] eKLR***, where the Court held that advocates should not swear affidavits on contentious matters as doing so makes them potential witnesses liable to cross-examination, thereby compromising orderly procedure.

100 The Respondent submitted that recent jurisprudence reaffirms the doctrine that an advocate ought not to swear affidavits on contentious matters, and that where counsel nonetheless does so, the affidavit (or offending portions) is liable to be expunged or accorded no probative weight. He cited ***Musau & 2 others v Kiamba [2025] KEELC 6565 (KLR)***, where the Court expunged portions of an affidavit sworn by an advocate after finding that the advocate had improperly deposed to contentious matters that ought to have been sworn by the party.

101 It is the Respondent's submission that the affidavits sworn by the Applicant's advocate are procedurally defective to the extent that they depone to disputed matters of fact, advance argumentative conclusions, rely on undisclosed sources of information, and attempt to fill evidential gaps that should properly be addressed by the party.

102 The Respondent therefore urged the Court to strike out the offending affidavits or, in the alternative, expunge the contentious portions and disregard them, as the inevitable prejudice is that the opposing party is deprived of the

ordinary evidential entitlement to test the deponent through cross-examination, while counsel simultaneously enjoys the privileged position of advocate.

103 I have considered the averments and submissions of the parties herein. From the documentation and the proceedings on the file, it is indeed true that on 22/9/2025 this court issued orders of stay on condition that the decretal sum be deposited in court before 26<sup>th</sup> September 2025. Further proceedings were scheduled for 27<sup>th</sup> October 2025.

104 On 27/10/25 when the parties appeared in court, the court was informed that the claimant had proceeded to attach the respondent's motor vehicle. On 24/10/25 the claimants indicated that the condition of stay was not met. It is however true as per the ruling on 25/11/25, the court at para 5 stated that stay orders were extended on 22/9/25 for the hearing and determination of the motion on 27/10/25.

105 The claimant having proceeded to execute and attach the respondent's motor vehicle on 24/10/25 was in contravention of the stay orders granted on 22/9/25 and which were extended and were to lapse on 27/10/25. The court heard the parties following this execution and on 27/10/25 found the execution unlawful and ordered immediate release of the motor vehicle of the respondent.

106 At the time the parties informed court that the outstanding issue was the deduction of statutory deductions by the respondent while settling the decretal amount. In the courts ruling of 25/11/25 the Hon. J Radido ( as he then was) determined that compensation under section 49 of the Employment Act is subject to appropriate statutory deductions but ordered a refund to the claimant within 30 days of any deduction made towards housing levy and social health insurance fund

107 The issue of whether the claimant acted against the orders of this court in proceeding to execute was well articulated by J. Radido in his ruling of 25/11/25 and this court need not reevaluate that finding.

108 What then remains is for this court to make a finding that the claimants and the interested party acted in contempt of this court's orders by proceeding to execute and attach the respondent's motor vehicle against the courts express orders. The claimant and the interested party are therefore found guilty of contempt and are liable to punishment. The claimant's counsel being aware of the orders of the court and having instructed the interested party to proceed and execute, I will hold the counsel Murage Juma & Co advocates and the interested party Icon Auctioneers personally liable in the circumstances.

109 I will in addition direct immediate release of the respondent's motor vehicle KSP 892R Toyota Hiace van to

the respondents. The costs of this application will be borne by the claimant's counsel and the auctioneer.

**Dated, Signed and Delivered Virtually at Nairobi  
this 18<sup>th</sup> Day of March, 2026.**

**HELLEN WASILWA  
JUDGE**