



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ojwang v Black Market Records Llc & another (Commercial Case E435 of 2025)  
[2026] KEHC 3956 (KLR) (Commercial and Tax) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3956 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E435 OF 2025  
JWW MONG'ARE, J  
MARCH 19, 2026**

**BETWEEN**

**MOSES OTIENO OJWANG ..... PLAINTIFF**

**AND**

**BLACK MARKET RECORDS LLC ..... 1<sup>ST</sup> DEFENDANT**

**CEDRIC SINGLETON ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. By an application dated 25<sup>th</sup> June 2025, the Plaintiff seeks an injunction pending the hearing of this suit to stop the Defendants from issuing any more copyright strikes or takedowns against his music, interfering with his access to his own musical catalogue and accounts, misrepresenting the ownership or authorship of his works and transferring or licensing his music to anyone else without his consent. He also seeks mandatory orders compelling the Defendants to immediately hand over all account credentials, login details, and records related to his music distribution and revenue and that they provide a full and complete accounting of all revenue earned from his music catalogue.
2. The application is supported by grounds on its face and the Plaintiff's supporting affidavit sworn on 25<sup>th</sup> June 2025 and it is opposed by the 2<sup>nd</sup> Defendant through the replying affidavit of Boro Francis Kimathi, an advocate, sworn on 14<sup>th</sup> July 2025. After the Plaintiff filed this application, the court granted him ex parte temporary injunctive orders pending hearing of the application which orders he now claims have been disobeyed by the Defendants and he seeks to cite them for contempt and have the court re-issue the same orders through his applications dated 25<sup>th</sup> July 2025 and 25<sup>th</sup> September 2025. These applications were responded to by the 2<sup>nd</sup> Defendant through his replying affidavits sworn on 15<sup>th</sup> August 2025 and 17<sup>th</sup> October 2025.



3. The three applications were canvassed by way of written submissions that I have considered together with the pleadings and I will be making relevant references to the same in my analysis and determination below.

### **Analysis and Determination**

4. I propose to first deal with the contempt application by the Plaintiff accusing the Defendants of deliberately disobeying the interim orders of 27<sup>th</sup> June 2025 that restrained the Defendants from issuing any copyright strikes, take-downs, or similar claims against the Plaintiff's musical works across all platforms; Interfering in any way with the Plaintiff's access to his musical catalogue, including login credentials and metadata control; Misrepresenting authorship, ownership, or registration of any of the Plaintiff's works under false or misleading names and; Taking any steps to transfer, license, or otherwise alienate the Plaintiff's works to any third party without the Plaintiff's consent. The Defendants were also compelled to cease any interference, directly or indirectly, with the Plaintiff's means of earning a living through music, pending the full hearing of the application.
5. The Plaintiff contends that that the Respondents have violated this order in several ways. First, that they re-uploaded the Plaintiff's new song "Can Kare" onto various online platforms including Audiomack and YouTube without his consent. Second, that they placed their own logo "Black Market Records" on the music video and claimed copyright over the work, creating public confusion about who owns and sponsors the music. Third, that these actions have sabotaged the Plaintiff's effort to rebuild his career independently on a new YouTube channel. Fourth, that they have failed and refused to remit any proceeds or royalties earned from the exploited works.
6. As such, the Plaintiff urges the court to find the Defendant guilty of contempt of court, order the immediate removal of all infringing copies of his music from online platforms, order the Defendants to file a report detailing all their infringing acts and revenues, sanction the Defendants by confining them to civil jail or imposing other penalties, order the 2<sup>nd</sup> Defendant, who is a US citizen, to deposit his passport with the court registrar to prevent him from fleeing and order distribution platforms to provide account statements for revenue related to the Plaintiff.
7. In his response, the 2<sup>nd</sup> Defendant depones that is not an employee of the 1<sup>st</sup> Defendant and has no access to the passwords for the music streaming sites. Therefore, he argues he cannot physically re-upload music or affix logos. He claims he is not a party to, or privy to any agreements between the Plaintiff and the 1<sup>st</sup> Defendant and that he has no contractual power to claim ownership or withhold royalties. He points out that the 1<sup>st</sup> Defendant has its own internal legal team responsible for copyright claims and issuing strikes on platforms like YouTube, implying those actions were not his personal doing. While acknowledging he is a US citizen, he denies being a flight risk and asserts he has been a "truthful and faithful foreign national" living in Kenya and avers that depositing his passport with the court would impede his legitimate business travel within East Africa. He highlights that by entering an appearance through his advocates, he has demonstrated a commitment to the court process, making it unnecessary to hold his travel documents.
8. The parties agree that once a court issues an order, it binds all and sundry, the mighty and the lowly equally without exception. It is meant to be obeyed and not otherwise and that the ingredients required to be proved for a successful contempt prosecution were set out by the Court of Appeal in *Ochino & another v Okombo & 4 others* [1989] KECA 65 (KLR) where it cited its own decision in *Mwangi Mangondu v Nairobi City Council* (Civil Appeal No. 95 of 1988) where it held that, "[T]he court will only punish as a contempt breach of injunction if satisfied that the terms of the injunction are clear and unambiguous, that the defendant has proper notice of the terms and that breach of the injunction



has been proved beyond reasonable doubt.” The position on the applicable standard of proof has been affirmed by the Supreme Court which held as follows in *Githiga & 5 others v Kiru Tea Factory Company Ltd* [2023] KESC 41 (KLR):

In enforcing compliance with lawful court orders, the procedures adopted by the court must be fair and reasonable in which full opportunity is given to an alleged contemnor to defend himself or herself. This is because contempt proceedings being quasi-criminal, require a higher standard of proof than in normal civil cases, and one can only be committed to civil jail or penalized on the basis of evidence that leaves no doubt as to the contemnor’s culpability.

9. Going through the application, the 2<sup>nd</sup> Defendant’s response and the submissions, I cannot confidently state that the latter can be held in contempt of the court orders for a number of reasons. First, whereas it is admitted that the 2<sup>nd</sup> Defendant had notice and knowledge of the ex parte orders, he has stated and it has not been rebutted, that he is not an employee of the 1<sup>st</sup> Defendant and has no access to the passwords for the music streaming sites meaning he is incapable of personally performing the acts prohibited by the court order like re-uploading music or affixing logos. Second, he has further stated that he is not part of the 1<sup>st</sup> Defendant’s legal team responsible for copyright claims and that from the copy of the screenshot annexed, another individual named "Themue6" and not the 2<sup>nd</sup> Defendant issued the copyright strikes on YouTube. Third, by stating he has no capacity to claim ownership of the musical works or withhold royalties, as he is not a party to the Agreement between the Plaintiff and the 1<sup>st</sup> Defendant, he has demonstrated that his actions are not in breach of the order. The Agreement, which he has attached, shows a direct contractual relationship between the Plaintiff and the 1<sup>st</sup> Defendant, not with him personally.
10. Weighing the rival arguments, it is clear to the court that there is no evidence that the 2<sup>nd</sup> Defendant personally re-uploaded the music, issued the copyright strikes or misrepresented ownership of the impugned works. He has raised a credible response that he lacks the personal capacity to comply with or breach the specific orders. There was no further evidence to rebut the 2<sup>nd</sup> Defendant’s claims and prove the four elements of contempt against him personally, beyond a reasonable doubt.
11. Turning to whether the 1<sup>st</sup> Defendant can be held in contempt, I have my doubts as to whether the said entity actually had knowledge of the court orders. The parties agree that the 1<sup>st</sup> Defendant is a foreign company registered in Sacramento, California, United States of America. The Affidavit of Service annexed by the Plaintiff states that the court order was served at "Studio Black Market Records LTD" in Nairobi. Studio Black Market Records LTD, is a separate Kenyan company and the document titled "Music Studio Services Agreement" by the 2<sup>nd</sup> Defendant confirms that this Kenyan studio is merely an independent contractor providing services to the US-based Label. The Plaintiff served the Kenyan studio, not the US company that is the actual party to the suit and there is no indication that this order was transmitted to the 1<sup>st</sup> Defendant by the Kenyan studio. As stated, for a contempt application to succeed, the court must be satisfied that the respondent had knowledge of the order. For a foreign company like the 1<sup>st</sup> Defendant, mere service on a local contractor is generally insufficient.
12. The late Majanja J., in *Hellen Winfrida Arika v Tamasha Corporation Ltd & 8 others* [2021] KEHC 6843 (KLR) took the same view when he held that in that case, there was no evidence that ‘Google Kenya’ is a subsidiary or agent of ‘Google LLC’ and that it was authorized to receive service on its behalf hence the court could not compel ‘Google Kenya’ to accept service on behalf of ‘Google LLC’. That to properly bring the foreign entity to the suit, notification of the suit ought to have been done by effecting service of a notice of summons but first, one ought to seek leave of the court under Order 5 of Civil Procedure Rules. The purpose of seeking leave is to enable the court to weigh the reasons adduced



by the Plaintiff and determine whether a proper case has been made out for service of summons outside its jurisdiction and the principles which govern the court in determining whether or not to grant leave are set out in Order 5 Rule 25. Upon such leave being granted, the summons have to be served upon such a defendant and it is only upon such service of the summons that a court assumes jurisdiction over a foreign defendant and not a moment sooner.

13. It is therefore my finding that the 1<sup>st</sup> Defendant was not properly served with the court order and it is likely that it was unaware of the same and therefore, it cannot be held to be in contempt. For these reasons, the Plaintiff's application dated 25<sup>th</sup> July 2025 is dismissed.
14. Turning to the Plaintiff's applications for the injunctive and mandatory orders and as stated, for a Kenyan court to have jurisdiction over a defendant who is not resident in Kenya like the 1<sup>st</sup> Defendant, the Plaintiff must first obtain leave from the court. The purpose of seeking leave is to allow the court to evaluate whether the Plaintiff has a prima facie case and whether the claim falls within the specific circumstances outlined in Order 5 Rule 25 that justify service outside Kenya. Jurisdiction is only assumed after leave is granted and after the summons or notice of summons is properly served on the foreign defendant. Since the Plaintiff has not first sought leave to serve the 1<sup>st</sup> Defendant outside Kenya, the court currently lacks the jurisdiction to compel the 1<sup>st</sup> Defendant to do anything. The Plaintiff must first regularize this position by seeking leave under Order 5 of the Rules.
15. In respect of the orders sought against the 2<sup>nd</sup> Defendant and in light of my earlier findings that he has provided prima facie evidence that he does not own the 1<sup>st</sup> Defendant and is not a party to the recording contract, the court cannot compel him to return what he does not own or account for money he never received. His role appears to have been operational/consultancy, not proprietary. Therefore, the application against him fails and the Plaintiff's case should be directed squarely at the 1<sup>st</sup> Defendant whom as I have stated must be regularly brought before the court.

### **Conclusion and Disposition**

16. The upshot of my findings is that the applications dated 25<sup>th</sup> June 2025 and 25<sup>th</sup> September 2025 are struck out and the application dated 25<sup>th</sup> July 2025 is dismissed. The suit cannot stand in light of the violations of the law as set out above. The suit is therefore struck out in its entirety. The 2<sup>nd</sup> Defendant is awarded costs for defending these applications.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19<sup>TH</sup> DAY OF MARCH 2026**

.....

**J.W.W. MONGARE**

**JUDGE**

In The Presence Of

Ms. Wamuyu for the Applicant.

Mr. Kimathi for the 1<sup>st</sup> Respondent.

Amos - Court Assistant

