

REPUBLIC OF KENYA
HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW NO. E131 OF 2022

REPUBLIC.....APPLICANT
VERSUS
NAIROBI METROPOLITAN SERVICES
& 5 OTHERS.....RESPONDENTS
AND
METRO TRAVELLERS COOPERATIVE SAVINGS
AND CREDIT SOCIETY LIMITEDINTERESTED
PARTY
EX PARTE: KAKA TRAVELLERS COOPERATIVE AND SAVINGS
CREDIT SOCIETY LIMITED

RULING

1. This matter was first placed before me on 15th April 2026, upon my transfer to the Judicial Review Division, Milimani. Various contentious representations were made to me by the Advocates appearing for the parties, and, as I was unfamiliar with what had transpired prior, I opted to first of all adjourn the matter, to enable me peruse the file, to acquaint myself with it, before I give directions. I reserved it for 22nd April 2026.
2. I was informed, by Mr. Kinyanjui, for the *ex parte* applicant, that Rosana Oscar Omurwa had been convicted, and that the only thing outstanding was his mitigation and sentencing. Mr. Tugee and Mr. Ndegwa, for Rosana Oscar Omurwa and the interested party, respectively, agreed, but asserted that there was a pending preliminary objection, which they stated should be disposed of first. Mr. Kinyanjui did not quite agree with that.
3. The matter was commenced on 31st August 2022, by way of an *ex parte* chamber summons, dated 29th August 2022, for

leave to initiate judicial review proceedings, for the orders of *Mandamus* and Prohibition. *Mandamus* to compel the 3rd and 4th respondents to remove vehicles belonging to the interested party from blocking those of the *ex parte* applicant from accessing the bus stage or terminus that they were operating from; and Prohibition to prohibit the respondents and the interested party from obstructing the vehicles of the *ex parte* applicant from accessing the terminus.

4. Leave was granted, on that day, 31st August 2022, to bring the application for those orders, and it was directed that the substantive Motion be filed within 7 days. On 1st November 2022, a further order was made, making the leave order, of 31st August 2022, operate as a stay, pending further court orders.
5. The *ex parte* applicant filed a Motion, dated 9th November 2022, seeking orders for deployment of police officers to ever see implementation or compliance with the order of 1st November 2022, and orders were made to that effect, on 21st November 2022, and a formal order was extracted, on 22nd November 2022.
6. An application, dated 8th December 2022, was filed, for the citation of the Managing Director of the interested party, for contempt of court. The application was canvassed, and was allowed, on 23rd February 2023, on the finding that the interested party and its managing director, Rosana Oscar Omurwa, had disobeyed the order that the court had made on 1st November 2022. The said Rosana Oscar Omurwa was required to appear before the Judge for notice to show cause.
7. The matter was fixed for notice to show cause on 8th March 2023. However, before that date, Rosana Oscar Omurwa filed an application, dated 3rd March 2023, seeking an order

staying the orders made on 23rd February 2023, and review of those orders on grounds that he had ceased to be the Chief Executive Officer/Managing Director of the interested party, effective from 1st January 2023. That application was canvassed, and it was dismissed, in orders that were made on 20th July 2023.

8. The matter came up several times thereafter, for the purpose of the sentencing of Rosana Oscar Omurwa. Eventually, orders were made on 11th October 2023, for issuance of warrants for the arrest of Rosana Oscar Omurwa. The 2 contemnors filed an application, the same day the orders were made, 11th October 2023, seeking to have the orders of 11th October 2022 set aside, specifically the order for the arrest of Rosana Oscar Omurwa. That application was canvassed, and was eventually dismissed on 20th December 2023, for lacking material upon which the said orders could be reviewed.
9. Thereafter, the interested party filed a preliminary objection, dated 27th February 2024, to the application dated 31st August 2022, raising a jurisdictional issue, that there was lack of jurisdiction, on the part of the court, to handle the judicial review application, as framed, as it sought judicial review orders against the interested party, which was not an administrative body, and that the dispute between it and the *ex parte* applicant was purely of a commercial nature.
10. That preliminary objection has not been argued to date, ostensibly as it was framed as a challenge to the main application, rather than to the contempt proceedings. There was also the recusal of the Judge handling the matter, Chigiti J, citing conflict of interest which had arisen.
11. A Motion was filed, dated 11th March 2024, seeking that the order extracted on 2nd November 2022, be

expunged, and the orders made in the ruling of 23rd February 2023 be set aside. That application was handled by Aburili J, and was dismissed on 3rd November 2025, on grounds that it was an invitation for the court to sit on appeal on orders made by another Judge. It was directed that the matter be fixed for mitigation and sentence.

12. An application was filed, dated 8th November 2025, seeking the recusal of Aburili J. The application was canvassed, and it was dismissed, through a ruling delivered on 9th April 2026. By then Aburili J had been transferred from the Division, and the matter ended up before me, on 15th April 2026, for directions.
13. This matter has had a very chequered history. It has not moved a tiny bit. It was filed on 31st August 2022, for leave to initiate judicial review proceedings. Leave was granted, the same day the matter was placed before the Judge, for the first time, and the substantive Motion was filed, the same day, 31st August 2022, and was responded to. However, directions on its disposal have never been taken, for the matter of contempt of court intervened, and has consumed all the litigation time since then. There is need to make progress, lest sight is lost, regarding the substantive matter that is before the court, that is the substantive Motion for *Mandamus* and Prohibition.
14. However, before that can be done, the contempt proceedings ought to be finalised. There is a conviction, and what pends is mitigation and sentence by the convict. The mention before me, on 15th April 2026, was to give directions on how the matter should progress. There are 2 issues. Mr. Kinyanjui says the only thing outstanding is the mitigation and sentence. Mr. Tugee and Mr. Ndegwa point to the pending preliminary objection.

15. That preliminary objection, dated 27th February 2024, was pending when the clients of Mr. Tugee and Mr. Ndegwa filed their Motion dated 11th March 2024. They did not urge the Judge to handle the preliminary objection and the Motion simultaneously, given that both were raising related issues. There could be a sense in which the disposal of the Motion, dated 11th March 2024, obliquely disposed of the said preliminary objection, for they both challenged the foundation of the orders made on 21st November 2022 and 23rd February 2023. The findings and holdings, by Aburili J, on the application, dated 11th March 2024, as delivered on 3rd November 2025, pretty much closed the door on any further challenges to any of the orders that Ndung'u J had made, on the basis that a subsequent Judge, handling the matter, cannot purport to sit on appeal on those orders, even if they did not agree with them. The orders were made on discretion. Any party, aggrieved, had the option of appealing, rather than asking another Judge of the High Court to re-visit them.
16. Secondly, the preliminary objection is not on the matter of the conviction and sentence, but of the foundation of the judicial review proceedings themselves. That takes me back to the ruling of 3rd November 2025. The Judge, who made the orders in 2022, exercised his discretion, and made orders. I doubt that another Judge would re-visit those decisions and vacate them, unless with the consent of the parties, or upon a proper case being made out. Indeed, they have been challenged twice, before Chigiti J and Aburili J, and the challenges were dismissed. I doubt, subject to being persuaded otherwise by the parties, that a third challenge would see the end of the day. The only way out, for the interested party and Rosana Oscar Omurwa, would be by way of appeal, to the Court of Appeal.
17. Thirdly, as the preliminary objection challenges the main application itself, rather than the contempt

proceedings, there should be no moment to deal with it, before mitigation and sentence. It should be dealt with at the time when the main application comes up for hearing. So that the mitigation and sentence should precede it, and once that is out of the way, the preliminary objection can be dealt with as part of the litigation around the substantive Motion.

18. In any case, the contempt proceedings were on a valid court order. At the time the contempt happened, that order had not been set aside. The possible subsequent invalidation of the order would not absolve anyone, who had disobeyed it prior, of liability. A court order is not a proposition or a suggestion. It must be obeyed first, and any issues around it should be raised and handled thereafter, unless it is demonstrated that the order is not capable of being implemented as framed.

19. The final thing about the preliminary objection is with the way it is framed. It says:

“TAKE NOTICE that METRO TRANS EA LIMITED, the interested party herein, will at the hearing of the judicial review application dated 31st August 2022 and any interlocutory application filed herein by any party raise a preliminary objection for adjudication by this Honourable Court prior to the hearing and determination of the said judicial review application or interlocutory application ...”

20. Leave, to file the substantive Motion, was granted on 31st August 2022, and the Motion was filed the same day, dated 31st August 2022. Quite properly, the preliminary objection would be available for argument when the said Motion comes up for hearing.

21. The notice of preliminary objection is also framed to say that the objection would be raised at the hearing of any interlocutory application, filed by either party. At the time it

was filed, there were 2 pending applications, one dated 31st January 2024, for citation of other individuals for contempt of court, and the other dated 21st February 2024, for joinder. It would appear that these 2 applications are still pending, and it would be open to the interested party to argue its preliminary points at their hearing.

22. An application was filed thereafter, dated 11th March 2024, by Rosana Oscar Omurwa, seeking the setting aside of the orders of 2nd November 2022 and 23rd February 2023. That application was canvassed twice, first on 2nd July 2024, before Chigiti J and secondly before Aburili J, on 2nd April 2025, and a ruling was delivered on it on 3rd November 2025. Yet, the preliminary objection, the subject of the notice dated 27th February 2024, was not argued, contrary to what is stated on its face. That was a perfect chance for the objection to be argued at that time. It was not.

23. It was argued, by Mr. Ndegwa, in one of the prior proceedings, that directions had been taken on 28th February 2024, on the preliminary objection of 27th February 2024. I see nothing in the proceedings of 28th February 2024, pointing to any such directions being given. What was recorded by the Judge was to this effect:

“Court

The court shall give directions on how it shall proceed with;

- (i) The pending sentencing which is hereby adjourned.*
- (ii) The notice of preliminary objection dated 27.2.24.*
- (iii) The Application by Mr. Mulama dated 21.2.24.*
- (iv) And the issue of the preservation.*
- (v) The contemnor to attend court on 12.3.24 @ 11.00 AM in open court.*

Signed
28.2.24”

24. Quite clearly, there were no directions given on 28th February 2024, on the preliminary objection dated 27th February 2024.
25. The mitigation and sentencing is not a fresh application. It is a continuation of the proceedings in the applications which gave rise to the orders of 21st November 2022 and 23rd February 2023. Mitigation and sentence do not amount to a hearing of those applications. Those applications were heard and determined. They were spent. What is pending is implementation of the orders made in the rulings on those applications. The preliminary objection should await hearing, at the hearing of the applications dated 31st January 2024 and 21st February 2024, or the substantive Motion dated 31st August 2022, and that should be after mitigation and sentence.
26. The parties are unnecessarily over litigating this matter, by filing application after application. The issue of the conviction of Rosana Oscar Omurwa is now beyond the High Court. If he is aggrieved, let him mitigate and wait for sentence, then he can appeal thereafter. Proceedings relating to civil contempt are quasi-criminal in nature, and, in criminal proceedings, the court is *functus officio* once it convicts. The matter becomes ripe for appeal after sentence is pronounced. The issues raised in the preliminary objection can be dealt with simultaneously with the pending substantive Motion for *Mandamus* and Prohibition. This matter has dragged on in court for too long.
27. Consequently, I hereby direct as follows:
(a) **That Rosana Oscar Omurwa shall appear in court, personally, on 5th May 2026, for mitigation;**

- (b) That sentence shall be pronounced on 5th May 2026, or at a later date, after due consideration of submissions that the parties may make at mitigation;
- (c) That the pending applications, dated 31st August 2022, 31st January 2024 and 21st February 2024 shall be disposed of after the mitigation and sentence, prioritising those dated 31st January 2024 and 21st February 2024; and
- (d) That the interested party shall argue its preliminary objection, at the hearing of the application dated 31st August 2022, in its response to that application.

28. Orders accordingly.

**DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS,
AT MILIMANI, NAIROBI, THIS 22ND DAY OF APRIL 2026.**

**W MUSYOKA
JUDGE**

Mr. Abdirahman, Court Assistant.

Advocates

Mr. Kinyanjui, instructed by J. Harrison Kinyanjui & Company, the Advocates for the *ex parte* applicant.

Mr. Ndegwa, instructed by Rapando & Odunga, Advocates for the interested party.

Mr. Tugee, instructed by Munyao Muthama & Kashindi, Advocates for Rosana Oscar Omurwa.