

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL AND TAX DIVISION**  
**COMM. CASE NO. E480 OF 2022**

**BETWEEN**

**JOY LINDA ODHIAMBO.....1<sup>ST</sup>**  
**PLAINTIFF**  
**EDU PLUS AFRICA LIMITED.....2<sup>ND</sup>**  
**PLAINTIFF**

**AND**

**HUMPHREY KASEMBELI MUCHUMA.....**  
**DEFENDANT**

**RULING**

**Introduction and Background**

1. On 3<sup>rd</sup> March 2025, the court found the Defendant guilty of contempt of the court's orders issued on 25<sup>th</sup> April 2024 where he was ordered "*...to produce the books of record, books of accounts, banking slips, Bank statements and audited financial accounts of the 2nd Applicant/Plaintiff in his custody from July 2019 to date*". He was thus issued with a Notice to Show Cause why he should not be committed to civil jail for a period not exceeding six(6) months as

punishment for the said disobedience. The Defendant was also granted thirty (30) days from the date of the ruling to purge the contempt failing which appropriate committal orders were to be issued.

2. The Defendant now claims to have purged the contempt and the parties have filed various depositions and submissions on the same that I have considered and I will be making relevant references to them in my analysis and determination below.

### **Analysis and determination**

3. The main issue for the court's determination is whether the Defendant has purged the contempt orders issued on 3<sup>rd</sup> March 2025. This court (Mugambi J.,) in **Law Society of Kenya & 3 others v Inspector General of Police & 4 others [2024] KEHC 10995 (KLR)** cited the Supreme Court of India's decision in **Pravin C. Shah vs K.A. Mohd. Ali & Anr AIR 2001 SUPREME COURT 3041** where the meaning of the purging process was explained:

*...Purging is a process by which an undesirable element is expelled either from one's own self or from a society. It is a cleansing process. Purge is a word which acquired implications first in theological connotations. In the case of a*

*sin, purging of such sin is made through the expression of sincere remorse coupled with doing the penance required. In the case of a guilt, purging means to get himself cleared of the guilt. The concept of purgatory was evolved from the word purge, which is a state of suffering after this life in which those souls, who depart this life with their deadly sins, are purified and rendered fit to enter into heaven where nothing defiled enters....”*

4. The court even went further to observe that merely serving a sentence for contempt of court is not enough to vindicate the authority of the court and that the best outcome is when the contemnor demonstrates a genuine remorse and seeks the court’s pardon. As such, purging contempt requires more than simply claiming to have complied as a contemnor must fully obey the court's orders, demonstrate genuine remorse and an intention to comply going forward and not engage in further contemptuous conduct.
5. The Defendant depones that he has produced audited financial accounts for the years 2019, 2020, 2021 and 2022. He relies on the affidavit of an accountant, KIPHONE OMAMBIA OGANDA, who stated that in the accounting profession, the terms “books of

record,” “books of accounts,” and “audited financial accounts” refer to the same thing, that is, the audited financial statements. Therefore, that producing the audited accounts satisfied the first three requirements as ordered by the court. The Defendant also states that he produced comprehensive bank statements for two NCBA Bank accounts; Account Numbers: 145\*\*\*\*\*39 -\*\*\*\*\*813 and 45\*\*\*\*\*44 - 1\*\*\*\*\*837 covering the relevant period and that the Plaintiff’s own deposition admits that the bank statements produced capture all the transactions involving the accounts.

6. The Defendant explains that the aforementioned two accounts were operated electronically and as a result, no physical banking slips were generated and he provides a letter from *NCBA Bank* dated 13<sup>th</sup> June 2025 confirming that both accounts were closed on 28<sup>th</sup> August 2024, and the bank could not ascertain further information regarding electronic transactions. Further, that in compliance with further court directives of 7<sup>th</sup> May 2025, he filed an affidavit from the said KIPHONE OMAMBIA OGANDA sworn on 21<sup>st</sup> May 2025 and that the court also directed him to explain that the accounts were operated electronically and he filed a further affidavit sworn on 16<sup>th</sup> June 2025 stating that the absence of

receipts meant banking slips could not be generated, and only bank statements could capture the transactions.

7. As such, the Defendant urges that the court should find that he is no longer in contempt, that he has successfully purged the contempt order of 3<sup>rd</sup> March 2025 and that any sanctions or adverse consequences arising from the contempt order should be lifted.
8. In response, the Plaintiff depones that the Defendant has not purged his contempt and should be punished. She argues that the court order required five distinct categories of documents; Books of Record, Books of Accounts, Audited financial accounts, Bank slips, and Bank statements and that contrary to the Defendant's accountant, under **sections 620, 628-633** of the ***Companies Act***, these are independent and separate documents that must each be kept properly. Therefore, producing only the Audited Financial Accounts does not satisfy the requirement for Books of Record or Books of Accounts. The Plaintiff points to the bank statements themselves, which show cheque debits and deposits, and several cash withdrawals which she states are not electronic transactions and therefore, the Defendant's claim that transactions

were non-receipted or purely electronic is contradicted by the evidence he himself produced.

9. The Plaintiff highlights contradictions in the Defendant's own depositions stating that in para. 4, the Defendant confirmed that banking slips dating from 2019 existed yet in para. 5 of the same affidavit, he claimed banking slips could not be availed because transactions were non-receipted. The Plaintiff also notes that the auditor's own list of documents included bank slips, further proving they were available.
10. It is the Plaintiff's further position that the NCBA Bank letter only states that the bank cannot provide further details on electronic transactions because the accounts were closed. The Plaintiff states that the court did not order production of electronic transaction data but ordered bank slips, books of account, and records and that the bank did not say that banking slips or books of record are unavailable and the letter therefore does not cure the contempt. As such, the Plaintiff urges the court to find that the Defendant remains in contempt of the 3<sup>rd</sup> March 2025 order, that he has failed to purge the contempt, despite being given the opportunity and that he should be punished for contempt.

11. Having gone through the pleadings, submissions and the principles of purging contempt highlighted above, it is my finding that the Defendant has not yet successfully and fully purged the contempt. It is correct that the court ordered production of five distinct categories of documents; books of record, books of accounts, banking slips, Bank statements and audited financial accounts. The Defendant has only produced Audited Financial Accounts for the year 2019–2022 and Bank statements but has not produced Books of record, Books of accounts and Bank slips. Whereas the Defendant’s accountant argued that “books of record,” “books of accounts,” and “audited financial accounts” are the same thing, the Plaintiff correctly pointed out that under **sections 620, 628-633** of the **Companies Act**, these are independent and separate documents that must each be kept. For ease of reference and understanding, the said provisions state as follows:

**620. Interpretation: Part XXV**

(1) *In this Part—*

**“annual financial statement”** *in relation to a company, means the company's individual financial statement for a financial year, and includes any group financial statement prepared by the company for that year.*

*(2) In the case of an unquoted company, its annual financial statement and reports for a financial year consist of—*

*(a) its annual financial statement;*

*(b) the directors' report; and*

*(c) the auditor's report on the financial statement and directors' report unless the company is exempt from audit.*

*(3) In the case of a quoted company, its annual financial statement and reports for a financial year consist of—*

*(a) its annual financial statement;*

*(b) the directors' remuneration report;*

*(c) the directors' report; and*

*(d) the auditor's report on—*

*(i) the financial statement;*

*(ii) the auditable part of the directors' remuneration report; and*

*(iii) the directors' report.*

*(4) A reference in this Part to a company's annual financial statement, or to a balance sheet or profit and loss account, includes notes to the statement, or balance sheet or profit and loss account that—*

- (a) give information required by a provision of this Act or the prescribed financial accounting standards; and*
- (b) are required or permitted by the provision to be given in a note to a company's financial statements.*

**628. Duty of company to keep proper accounting records**

*(1) Every company shall keep proper accounting records.*

*(2) For purposes of subsection (1), accounting records are proper only if they—*

*(a) show and explain the transactions of the company;*

*(b) disclose with reasonable accuracy, up to the end of the previous three month trading period, the financial position of the company at that time; and*

*(c) enable the directors to ensure that every financial statement required to be prepared complies with the requirements of this Act.*

*(3) In particular, a company shall ensure that its accounting records—*

*(a) contain—*

*(i) entries from day to day of all amounts of money received and spent by the company and the matters*

*in respect of which the receipt and expenditure takes place; and*

*(ii) a record of the assets and liabilities of the company; and*

*(b) comply with the prescribed financial accounting standards.*

*(4) If the business of the company involves dealing in goods, the company shall ensure that its accounting records contain—*

*(a) statements of stock held by the company at the end of each financial year of the company;*

*(b) all statements of stock takings from which any statement of stock as is referred to in paragraph (a) has been or is to be prepared; and*

*(c) except in the case of goods sold in the ordinary course of ordinary retail trade - statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable them to be identified.*

*(5) A parent company that has a subsidiary undertaking in relation to which the above requirements do not apply shall take reasonable steps to ensure that the undertaking keeps*

*such accounting records as will enable the directors of the parent company to ensure that every financial statement required to be prepared under this Part complies with the requirements of this Act.*

**629. Offence for company to fail to keep proper accounting records**

*(1) If a company fails to comply with a provision of section 628, the company, and each officer of the company who is in default, commit an offence.*

*(2) A person who is found guilty of an offence under subsection (1) is, liable on conviction—*

*(a) in the case of a body corporate, to a fine not exceeding two million shillings; or*

*(b) in the case of a natural person, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.*

**630. Where and for how long company is required to keep its records**

*(1) Except in so far as the regulations otherwise provide, a company shall—*

(a) keep its accounting records at its registered office;  
and

(b) ensure that the records are at all times open to inspection by the officers of the company.

(2) A company shall preserve its accounting records for not less than seven years from and including the date on which they were created.

(3) If the company is in liquidation, subsection (2) is subject to any rules in force relating to companies that are in liquidation.

**631. Offences relating to company's failure to preserve its records**

(1) If a company fails to comply with a provision of section 630(1), the company, and each officer of the company who is in default, commit an offence.

(2) An officer of a company who—

(a) fails to take all reasonable steps to ensure that the company complies with section 630(2); or

(b) intentionally causes the company to fail to comply with that subsection, commits an offence.

*(3) A person who is found guilty of an offence under subsection (1) is liable on conviction—*

*(a) in the case of a body corporate, to a fine not exceeding two million shillings; or*

*(b) in the case of a natural person, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.*

**632. How company's financial year is to be determined**

*(1) A financial year of a company is determined in accordance with this section.*

*(2) A company's first financial year—*

*(a) begins with the first day of its first accounting reference period; and*

*(b) ends with the last day of that period or such other date (not more than seven days before or after the end of that period) as the directors may determine;*

*(3) Subsequent financial years of a company—*

*(a) begin with the day immediately following the end of the previous financial year of the company; and*

*(b) end with the last day of its next accounting reference period or such other day, not more than seven days before or after the end of that period, as the directors may determine.*

*(4) The directors of a parent company shall ensure that, except when in their opinion there are good reasons to the contrary, the financial year of each of its subsidiary undertakings coincides with the financial year of the parent company.*

*(5) If the directors fail to comply with subsection (4), each of the directors who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.*

*(6) If, after a director has been convicted of an offence under subsection (5), the directors continue to fail to comply with subsection (4), each of the directors who is in default commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.*

**633. How accounting reference periods and accounting reference date of company are determined**

(1) *The accounting reference periods of a company are determined according to its accounting reference date in each calendar year.*

(2) *Unless otherwise prescribed in the articles or by any law, the accounting reference date is a date specified by an ordinary resolution.*

(3) *The directors of the company shall ensure that the first accounting reference period of a company is a period of at least six months after the date of its incorporation and not more than eighteen months after that date.*

(4) *The subsequent accounting reference periods of a company are successive periods of twelve months beginning immediately after the end of the previous accounting reference period and ending with its accounting reference date.*

(5) *This section has effect subject to section 634*

12. From the above provisions, it is evident that Books of Accounts/Accounting Records are the day-to-day entries of money

received and spent, assets and liabilities, stock statements, and details of goods sold or purchased and that these are the raw, original records of transactions. The Annual Financial statement is defined as a summary prepared at the end of the financial year, derived from the Books of Accounts/Accounting Records and includes the balance sheet, profit and loss account, and notes. The Audited Financial Accounts on the other hand refers to the annual financial statement after it has been examined and certified by an independent auditor, plus the auditor's report. Books of accounts are created throughout the financial year, audited financial accounts are prepared after the financial year ends and books of accounts capture every individual transaction whereas audited accounts are aggregated summaries. Further, **section 630(2)** requires companies to preserve accounting records for not less than seven years. If the audited accounts were the same as the books, there would be no need for a separate seven-year preservation requirement for accounting records.

13. It is therefore clear that the Defendant's accountant's position and an auditor's opinion cannot override a statutory provision or requirement. By producing only the audited financial accounts, the Defendant did not produce the underlying books of record or books

of accounts and the Plaintiff correctly states that the bank statements show cheque payments, cheque deposits, and cash withdrawals and these transactions should have been recorded day-to-day in the books of account and the audited accounts alone do not show those individual transactions.

14. I am also in further agreement with the Plaintiff that the Defendant's depositions are contradictory as to the banking slips as the bank statements show cheque deposits, cheque debits, and cash withdrawals, none of which are electronic or non-receipted transactions. The Defendant's own deposition admits that banking slips dating from 2019 existed and the auditor's own list of documents included bank slips. It is therefore clear to the court that the Defendant's explanation is not credible as he admitted bank slips existed, yet failed to produce them which is not genuine compliance but evasion.

15. I further note that the Defendant does not apologize for the initial contempt, does not acknowledge that he failed to keep proper books of account as required by law and he attempts to blame the bank rather than accepting responsibility for his own failure to maintain and produce records. Therefore, as it stands, the Defendant remains in a state of disobedience of the court's orders.

However, I will accord him another opportunity to produce the remaining documents failure to which, a further penalty for non-compliance will be meted.

### **Conclusion and Disposition**

16. In sum, the Defendant is granted 90(Ninety) days from the date of this ruling to produce the remaining documents that is; books of record, books of accounts and banking slips of the 2<sup>nd</sup> Plaintiff from July 2019 to date. Failure to produce the same, then the Defendant shall pay a fine of Kshs. 200,000.00 or be committed to civil jail for a period of six months. It is so ordered.

**DATED SIGNED AND DELIVERED virtually at NAIROBI this**

**8<sup>th</sup> DAY of MAY 2026**

.....  
**J.W.W. MONGARE**  
**JUDGE**

### **IN THE PRESENCE OF**

1. Mr. Ochanda for the Plaintiff/Applicant
2. Mr. Otieno holding brief for Mr. Nyamwaro for the Defendant
3. Amos- Court Assistant