



**Nakachi v Centric Air Ambulance Limited (Cause E614 of 2021)
[2023] KEELRC 3177 (KLR) (5 December 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3177 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E614 OF 2021
NJ ABUODHA, J
DECEMBER 5, 2023**

BETWEEN

PRAXEDES NAKACHI APPLICANT

AND

CENTRIC AIR AMBULANCE LIMITED RESPONDENT

RULING

1. This ruling is in respect to the Claimant's Application dated 19th June,2023 which is brought under section 38 of the [Civil Procedure Act](#) and Order 22 Rule 31 of the [Civil Procedure Rules](#) [2010].
2. The Application seeks a Notice to show cause to issue against Peter Kenneth Chege Nduati (The Respondents Director) why he should not be committed to civil jail for failing to implement and give effect to the Decree of this Honourable Court dated 7th March,2023 and that on failing to show the necessary cause, Peter Kenneth Chege Nduati be committed to civil jail for a maximum period of six(6) months for failing to satisfy the decree of this Honourable Court.
3. The application is supported by the Affidavit of Praxedes Nakachi the Claimant herein who averred that on 22nd day of September, 2022 the court delivered its judgment in this matter. The taxation of the Bill of costs was subsequently duly conducted and a final decree in the matter issued on the 7th of March,2023.
4. The Applicant averred that the Judgment of the court and its final Decree has to date not been challenged, varied or set aside. That on 11th day of 2023 his advocates on record served the Respondent's Advocates, the Respondent and the Respondent's sole Director; Peter Kenneth Chege Nduati with Notice of judgment, final decree and certificate of taxation.
5. The Applicant averred that despite due and proper service there has been no compliance from the respondent due to the inaction or willful neglect by Peter Kenneth Chege Nduati who is the sole officer of the Respondent herein.



6. The Applicant further averred that a lawful order or decree of court against a legal entity can only be implemented through its officers who thereby become responsible against consequences of non-compliance or breach.
7. The Applicant further averred that the nature of orders sought will be granted if a party against whom a decree is passed has after institution of the suit dishonestly transferred, concealed or removed any part of his property, or committed any other act of bad faith in relation to his property.
8. The Applicant averred that from the conduct of Respondent's director, the acts of dishonesty and concealment have been committed to perpetrate noncompliance with the Decree herein. That the Director has caused transfer of motor vehicle registration Nos. KCT 687R and KCU 938Z to third parties with intention of defeating any execution of the decree to be passed by the court.
9. The Applicant averred that the said transfer must have been done by the Respondent's Director or under his authority and or knowledge.
10. In reply the Respondent filed its replying affidavit sworn on 4th July,2023 averred that Captains Judy Nyachae, Steve Parkinson and himself Peter Kenneth Chege Nduati conceived the idea to form a new business that would save lives of the Kenyan populace through medical evacuation and improve three fold on what was available in the market affordably.
11. The Respondent averred that they then incorporated Centric Air Ambulance limited on 28th August 2018 with deponent being the promoter of the company. That the business needed some huge capital together with assistance of investors input where he took a loan of USD 300,000 from fellow promoter Mr. Steve Parkinson which sum was used for initial set up of the business.
12. The Deponent averred that he has not repaid the said loan to date and the pick up of the business was very slow in the last quarter of 2019 due to failure of capital injection. In 2020 due to Covid 19 the operations went under where potential investors withheld their funding.
13. The Respondent averred that in February 2019 operations come in to halt with the Respondent having an accumulated liability in salary arrears of Kshs 8,063,425/=. In March 2020 with Corona Virus hitting the country and being declared a global pandemic the investors withdrew, shareholders agreements were never signed, allotment of shares was frustrated and everything went down to date.
14. The Respondent averred that apart from the above salary arrears the company has other liabilities which are company' trade payables as at January 2020 at the sum of Kshs 19,928,153.57. That the dollar and Kenya Shillings accounts at I & M bank remain overdrawn and dormant for over three years and half since the company is not operational. That he was not able to furnish the bank statements due to this fact of dormant accounts.
15. The Respondent averred that the claim in this matter was filed on July,2021 when the company had ceased operations. Although he is the promoter for the company the company is now a shell as it ceased operations early 2020.
16. The Respondent further averred that the said motor vehicles were ambulances obtained through loans from Maisha Bora Sacco and when the Respondent went under in 2020 with no prospects of revival or servicing of the loans, Maisha Bora Sacco proceeded to liquidate the same to service the loan.
17. That the Respondent has not refused or neglected to pay its dues as enumerated in the decree of the court but it is unable to pay not only the applicant but also all other employees who worked for the Respondent before operations came in to halt in 2020.



18. The Respondent further averred that the company was killed by Covid 19 which was beyond his doing and he should not be punished by being committed to civil jail.
19. Through a supplementary affidavit sworn on 24th August 2023 the Respondent produced a letter from Maisha Bora Sacco confirming that the said motor vehicles although registered in the name of the Respondent were used as collateral for loan facility extended to John Aoka Gecheo who did not service the loan. The Motor vehicles were repossessed and liquidated.
20. The application was dispensed of by written submissions.

Determination

21. I have considered the application, the responses and submissions by the parties. The main issue herein is whether Notice to show cause should issue why the Director Peter Kenneth Chege Nduati should not be committed to civil jail for failure to settle the decree sum in this matter.
22. The Respondent is well aware of the judgment and decree of this court. The Respondent avers that it is not in a position to settle the decretal sum for the fact that the company was not operating and it was running insolvent. The issue of financial difficulties of the Respondent was raised during hearin. The Director has not produced any financial statements to show the financial situation of the company.
23. The Respondent only states that the accounts have been dormant hence could not produce the audited accounts. I do not agree with this proposition because as the director of the Respondent he ought to produce all these documents to prove his case. Even with Covid-19 pandemic which the Court accepts was a global pandemic, the Respondent ought to have produced financial statements to illustrate that it was facing financial difficulties.
24. The Court further wonders why despite the difficulties stated by the respondent, he has decided to sit back watch the company running insolvent has not initiated any process of insolvency in order to liquidate the company worth millions of shares.
25. The committal of judgment debtor to civil jail is provided for under section 38 of the [Civil Procedure Act](#) where dishonesty is proved.
26. In the case of [Innocent G. Ondieki v Julius Nakaya Kabole](#) [2019] eKLR the court held as follows; In [Solomon Muriithi Gitandu & Another v Jared Maingi Mburu](#) [2017] eKLR the court held that - ‘In the case of [Braeburn Limited v Gachoka and another](#) [2007]; it was held *inter alia*; ‘A person is not liable to be committed to civil jail for inability to pay a debt but a dishonest and fraudulent debtor is liable to be punished by way of arrest and committal.
27. In this case the Respondent herein has been found previously by this court to have engaged in fraudulent activities to obstruct the Claimant from enjoying the fruits of his judgment I find it proper for him to show cause why he not be to committed to civil jail.
28. On the issue of the motor vehicles in question, the Court notes that the records produced do not show the relationship between the third party who took the loan with the motor vehicles being collaterals. There is no explanation of who John Aoka Gecheo was to the Respondent necessitating him take a loan with the Respondent’s motor vehicles being collaterals.
29. In addition, why was the said motor vehicles registered in the name of the Respondent if they were bought on loan? In my understanding if at all the said motor vehicles were bought on loan then they would be jointly owned by the Respondent and the Maisha Bora Sacco. The official search of motor



vehicles as at 2019 shows that the motor vehicles were registered in the name of the Respondent and not jointly. This clearly shows that the Respondent is only using tricks to avoid honouring Judgment of this court.

30. In the upshot the Respondent's Director Peter Kenneth Chege Nduati should show cause why he should not be committed to civil jail for failure to honour the decree of this court and if he does not show cause he be committed to civil jail.
31. In conclusion the Claimant's application dated 19th June, 2023 is found merited and is hereby allowed with costs.
32. It is so ordered

DATED AT NAIROBI THIS 5TH DAY DECEMBER, 2023

DELIVERED VIRTUALLY THIS 5TH DAY OF DECEMBER, 2023

ABUODHA NELSON JORUM

JUDGE

