



REPUBLIC OF KENYA



**Ogwang v Equator Bottlers Limited; Equator Bottlers Welfare Association (Objector)
(Cause 19 of 2020) [2022] KEELRC 13551 (KLR) (15 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13551 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 19 OF 2020
CN BAARI, J
DECEMBER 15, 2022**

BETWEEN

CLAY ONYANGO OGWANG CLAIMANT

AND

EQUATOR BOTTLERS LIMITED RESPONDENT

AND

EQUATOR BOTTLERS WELFARE ASSOCIATION OBJECTOR

RULING

1. Before court is an application dated 11th October, 2022, brought pursuant to Sections 1A, 1B, 3 3A & 63 (c) of the *Civil Procedure Act*, and Order 45 Rule 1 of the *Civil Procedure Rules*. The Objector/ Applicant seeks the committal to civil jail for a period of six months of M/S. Kenneth Ochieng Odhiambo t/a Jenks Auctioneers for contempt of court. It is also prayed that the Contemnor bears the costs of this application.
2. The application is supported by the grounds on its face and the Affidavit of James Were Oyuu, sworn on 11th October, 2022. The motion is premised on an order of this Court issued on 26th September, 2022, directing the release of Motor Vehicle Registration No. KCX 059N
3. The Applicant contends that the order was served personally upon M/s Kenneth Ochieng Odhiambo T/A Jenks Auctioneers on 26th September, 2022, which is the same day the order was issued. The Applicant further avers that the motor vehicle has not been officially released to the them.
4. It is the Applicant's position that the order subject of the contempt proceedings herein, was endorsed with a penal notice, and the Contemnors disobedience of the lawful order amounts to a violation of the rule of law.



5. M/s Kenneth Ochieng Odhiambo t/a Jenks Auctioneers opposed the application vide a replying affidavit sworn Kenneth Ochieng Odhiambo on 28th October, 2022. The Auctioneer deposes that he was given instructions by the Firm of E.A. Ochieng & Co. Advocates to proclaim and attach the property of the Respondent in Kisumu Elrc No.19 Of 2020. It is the Auctioneer's position that he proceeded to obtain warrants of attachment and proclaimed the subject motor vehicle
6. The Auctioneer further deposes that he received further instructions from the Firm of E.A. Ochieng & Co. Advocates to release the subject motor vehicle and that he wrote a letter dated 13th July, 2022, to the yard owner to release the motor vehicle, and that the letter gave details of the driver whom he instructed to pick the vehicle.
7. It is the Auctioneer's position that he agreed with a driver named Jacob that they meet at the car yard, but that the driver informed him that the Chairman of the Applicant had told him not to pick the motor vehicle.
8. The Auctioneer further avers that he proceeded to write to the Law Firm informing them that he had unconditionally released the motor vehicle but the Applicant refused to collect the motor vehicle.
9. The motion was urged orally before court on 21st November, 2022. Both counsels reiterated their grounds in support and those in opposition to the application.

Determination

10. The Black's Law Dictionary (Ninth Edition) defines contempt of court 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.”
11. The purpose of contempt proceedings is to safeguard the rule of law and not to install the dignity of the court. In *Johnson vs Grant*, 1923 SC 789 at 790 Lord President Clyde stated:

“...The law does not exist to protect the personal dignity of the judiciary nor the private rights of parties or litigants. It is not the dignity of the court which is offended. It is the fundamental supremacy of the law which is challenged.”
12. The court record shows that M/s Kenneth Ochieng Odhiambo t/a Jenks Auctioneers, was served with the orders subject of this motion, going by the exchange of messages between himself and an officer of the Applicant, together with an affidavit of service exhibited herein.
13. The Auctioneer has produced copies of letters addressed to the car yard instructing them to release the motor vehicle. This in my view is what could be termed as reasonable explanation which indicates that the Auctioneer did not willfully disobey the orders of the court.
14. In *Kenya Tea Growers Association vs Francis Atwoli and 5 Others* [2012] eKLR Lenaola J cited with approval the case of *Clarke and Others vs Chadburn & Others* [1985] 1All E.R. (PC), 211 where the court stated:

“I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal....”



15. In my opinion, the Auctioneer's disobedience was not deliberate and/or willful as to amount to contempt of court. The issue of contempt thus fails on this ground.
16. The elephant in the room in my view, is actually the storage charges, and which could be the reason neither party wants to collect the motor vehicle.
17. To start with, the car yard where the Auctioneer parked the subject motor vehicle is only known to the Auctioneer as they are not party to this application/suit. The Auctioneer did not exhibit the storage agreement between himself and the car yard, and hence the terms and conditions of storage, including the amount payable per day in respect of the storage is only known to the Auctioneer.
18. It seems to me that the Auctioneer was avoiding storage charges by refusing to himself or his agents deliver the motor vehicle to the rightful owners, and which is a cost he was to pass to the party that instructed him.
19. The Auctioneer should have delivered the vehicle to where he picked it from, and charge the party that instructed him the costs attendant to the storage. The storage charges that have since accrued are of the auctioneer's own making.
20. In the upshot, I order that the Auctioneer- M/s Kenneth Ochieng Odhiambo t/a Jenks Auctioneers, meets the storage charges and deliver motor vehicle registration Number. KCX 059N to the Applicant herein within 48 hours of this order.
21. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 15TH DAY OF DECEMBER, 2022.

CHRISTINE N. BAARI

JUDGE.

Appearance:

Mr. Achura present for the Respondent/Auctioneer

N/A for the Applicant

Ms. Christine Omollo-C/A

