



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Nasokho & another v Progressive Credit Limited & another (Civil Case
E014 of 2023) [2025] KEHC 5141 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5141 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL CASE E014 OF 2023
RN NYAKUNDI, J
APRIL 29, 2025**

BETWEEN

ANNE BELIA NASOKHO 1ST PLAINTIFF

CROWADA SUPPLIED LIMITED 2ND PLAINTIFF

AND

PROGRESSIVE CREDIT LIMITED 1ST DEFENDANT

ROSE NEKESA BUKANIA 2ND DEFENDANT

RULING

1. Before me for determination is a Notice of motion dated 7th March, 2025 expressed to be brought under the provisions of section 4&6 of the [Contempt of court Act](#), section 3A of the [Civil Procedure Act](#), Order 51 Rule 1 of the Civil Procedure Rules. The applicant seeks reliefs as follows:
 - a. Spent
 - b. That this court be pleased to issue summons against the directors of Respondent/Contemnor, Progressive Credit Limited be cited for contempt of court for wilfully disobeying the orders issued by this Honourable court on 28th July, 2023 barring the Respondent from selling, dealing or disposing the suit motor vehicle KTCB 546M.
 - c. That the Directors of 1st Respondent/Contemnor, Progressive Credit Limited be committed to Civil Jail for a term of six(6) months for contempt of court for blatantly disobeying and/or defying court orders issued on 28th July, 2023.
 - d. That the directors of Progressive Credit Limited, be ordered to vitiate and or sever the Sale agreement recently entered into with GETA Farmers' Co-operative society.



- e. That the Honourable court issue any further orders it deems just and necessary to uphold the dignity and authority of the court.
 - f. The costs of this application be in the cause.
2. The application is supported by an affidavit sworn by Anne Belia Nasokho and on grounds that:
- a. That the applicant herein vide High Court Miscellaneous Application No. E135 of 2023 sought leave to institute a derivative claim against the Defendants/Respondents herein.
 - b. That the court upon consideration of the application filed by the applicant herein granted the orders sought in the application filed in High Court Miscellaneous Application No. E135 of 2023 and the applicant was granted leave necessitating the filing of the instant suit.
 - c. That on the Honourable Court in High Court Miscellaneous Application No. E135 of 2023 on 28th July, 2023, issued stay orders barring the Respondent from disposing off or otherwise dealing with the suit motor vehicle KTCB 546M.
 - d. That the applicants advocate on record, made an oral application to have the stay orders remain in force during the pendency of the derivative suite, the same orders were issued by the honourable court.
 - e. That despite being served and being aware of the said orders, the 1st Respondent/Contemnor has wilfully disobeyed them by selling the suit motor vehicle and causing the insurance of the suit motor vehicle to be registered under a new policyholder Geta Farmers Cooperative Society, contrary to the court's directive.
 - f. That the Respondent's actions amount to contempt of court and undermine the authority and dignity of this Honourable Court.
 - g. That it is in the interest of justice and the rule of law that the Respondent be punished for contempt to deter further disobedience of court orders.
 - h. It is in the interest of fair administration of justice and the rule of law that the application be granted to restore the integrity of the Judiciary, Rule of Law, and protect against the otherwise devastating violation of fundamental rights of the Applicant guaranteed by the Constitution of Kenya, 2010.
 - i. That the actions by the 1st Respondent complained of are in total disregard of the court order and blatant disrespect to this court and this court ought to uphold its dignity and the rule of law.
3. In response to the application, the respondent filed a replying affidavit through Mikal Christine who deposed as hereunder:
- a. That I am a Legal Officer of the 1st Defendant herein fully aware of the facts giving rise to this dispute and duly authorized to swear this affidavit on its behalf.
 - b. That by a letter of offer dated 7th November, 2020 the 1st Defendant herein advanced a loan facility of Kshs. 400,000/= to the 2nd Plaintiff, which was secured by the tractor registration number KTCB 546M ("the motor vehicle).
 - c. That the 2nd Defendant defaulted in repayment of the loan and the motor vehicle was repossessed by the 1st Defendant and towed to Foresight Motors Limited awaiting sale to recover the loan amount that was outstanding.



- d. That after the motor vehicle was repossessed, the Plaintiffs filed High Court Civil Miscellaneous Application No. E135 of 2023 seeking leave to file a derivative suit on behalf of the 2nd Plaintiff.
- e. That I am aware that an order of stay was given by this court on 28th July, 2023 against the disposition of the motor vehicle.
- f. That following issuance of the order the motor vehicle was held at the yard and it remains there to date.
- g. That in response to paragraph 6 of the Supporting Affidavit, the motor vehicle has not been sold as alleged. The 1st Defendant is unaware of the claim that the insurance of the motor vehicle is under a new policy holder as we have no authority to cause registration of the insurance for the moto vehicle to any person as we have no interest in the Tractor other than that of a financier to securing its rights pursuant to the loan advanced to the 2nd Defendant.

Analysis and determination

4. The application before the Court stems from an alleged violation of court orders issued on 28th July, 2023, which barred the 1st Respondent, Progressive Credit Limited, from selling, dealing with, or disposing of motor vehicle KTCB 546M. The Applicant contends that despite being served with these orders, the 1st Respondent wilfully disobeyed them by selling the subject motor vehicle and causing its insurance to be registered under a new policyholder, Geta Farmers Cooperative Society. Before proceeding to the merits of the application, I must first address a preliminary issue regarding the applicable law on contempt of court.
5. The Court takes judicial notice of the fact that the present application is expressed to be brought under the provisions of sections 4 and 6 of the Contempt of Court Act, among other provisions. It is therefore necessary for this Court to determine the legal status of the Contempt of Court Act and whether it provides a valid legal foundation for the present application.
6. The Contempt of Court Act 2016 was declared unconstitutional in its entirety by the High Court in Kenya Human Rights Commission v Attorney General & Another (2018) eKLR. Justice Chacha Mwita found that the Act contravened various provisions of the Constitution, particularly those relating to the independence of the Judiciary.
7. Section 5 of the Judicature Act is one of the provisions that were repealed by the Contempt of Court Act 2016. Following the declaration of unconstitutionality, the question arises whether the repeal of Section 5 of the Judicature Act remains effective or whether the section has been reinstated. I hold the view and as other courts of equal status have held that having been declared unconstitutional, all the provisions of the Contempt of Court Act, including the repeal of Section 5 of the Judicature Act, became a nullity. It is as if the Contempt of Court Act was never enacted. This means that Section 5 of the Judicature Act was reinstated following the nullification of the Contempt of Court Act.
8. This was the position taken by the Court in Republic v Kajiado County & 2 Others ex parte Kilimanjaro Safari Club Limited which I agree with where the Court stated –

“This section was repealed by section 38 of the Contempt of Act of 2016, and as the said Act has since been declared invalid, the consequential effect in law is that it had no legal effect on, and therefore did not repeal section 5 of the Judicature Act, which therefore continues to apply. In addition, the substance of the common law is still applicable under section 3 of the Judicature Act. This Court is in this regard guided by the applicable English Law



which is Part 81 of the English Civil Procedure Rules of 1998 as variously amended, and the requirement for personal service of court orders in contempt of Court proceedings is found in Rule 81.8 of the English Civil Procedure Rules.”

9. Mativo J. restated the test for establishing contempt in his decision in *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] eKLR where he stated –

“40. It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove

- (i) the terms of the order,
- (ii) Knowledge of these terms by the Respondent,
- (iii) Failure by the Respondent to comply with the terms of the order.

Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand* who succinctly stated:-

“There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-

- (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- (b) the defendant had knowledge of or proper notice of the terms of the order;
- (c) the defendant has acted in breach of the terms of the order; and
- (d) the defendant's conduct was deliberate..”

10. The test for establishing contempt as restated by Mativo J. in *Samuel M. N. Mweru & Others v National Land Commission & 2 others* (Supra) provides a clear framework for this Court's analysis. According to this precedent, to succeed in civil contempt proceedings, the applicant must prove: (i) the terms of the order, (ii) knowledge of these terms by the Respondent, and (iii) failure by the Respondent to comply with the terms of the order. Upon establishing these elements, willfulness and bad faith would normally be inferred, subject to rebuttal by the Respondent on a balance of probabilities.

11. Applying these principles to the present case, I find that the first two elements are clearly established. The court orders of 28th July, 2023 were explicit in prohibiting the 1st Respondent from disposing of or dealing with motor vehicle KTCB 546M. These orders were clear, unambiguous, and binding on the 1st Respondent. Furthermore, the 1st Respondent, through its Legal Officer Mikal Christine, has acknowledged awareness of these orders in paragraph 5 of the replying affidavit.



12. The point of contention lies in the third element: whether the 1st Respondent has actually breached the terms of the order. The Applicant alleges that the 1st Respondent has sold the motor vehicle to Geta Farmers Cooperative Society and transferred its insurance registration. However, the 1st Respondent categorically denies these allegations, maintaining that the motor vehicle remains at the yard and has not been sold as claimed.
13. Upon careful examination of the evidence presented, I note that the Applicant has not annexed any documentary proof to substantiate the claim that the motor vehicle has been sold or that its insurance has been transferred. There is no sale agreement, transfer document, or insurance policy that would corroborate the alleged transaction with Geta Farmers Cooperative Society. The assertion remains unsupported by tangible evidence that would meet the higher standard of proof required in contempt proceedings.
14. The 1st Respondent has provided a direct denial of the allegations, stating that the motor vehicle remains at the yard and has not been sold. Furthermore, the 1st Respondent has clarified that it has no authority to cause registration of insurance for the motor vehicle to any person, as its interest is limited to that of a financier securing its rights pursuant to the loan advanced.
15. In light of these competing claims, and in the absence of compelling evidence from the Applicant, I am unable to conclude that the 1st Respondent has breached the court orders. It is a cardinal principle in our jurisprudence that contempt proceedings should not be embarked upon lightly.
16. In conclusion, having analysed the evidence before me in light of the established legal principles on contempt of court, I find that the Applicant has not discharged the burden of proving beyond reasonable doubt that the 1st Respondent has wilfully disobeyed the orders issued by this Court on 28th July, 2023. The application for contempt must therefore fail.
17. Accordingly, the Notice of Motion dated 7th March, 2025, is hereby dismissed. Given the circumstances of this case, I order that each party shall bear its own costs.
18. It is ordered so.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 29TH DAY OF APRIL 2025.

.....

R. NYAKUNDI
JUDGE

