



**Mohamed & 6 others v Roy Hauliers Limited & another; Sarr Freights Corporation & 2 others
(Interested Parties) (Civil Suit E005 of 2024) [2025] KEHC 12097 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12097 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT E005 OF 2024
F WANGARI, J
MAY 29, 2025**

BETWEEN

**NUR HASSAN MOHAMED 1ST PLAINTIFF
IBRAHIM ADAN WARDERE 2ND PLAINTIFF
SHIRE MOHAMED MUKHTAR 3RD PLAINTIFF
SAID SULEIMAN ABDI 4TH PLAINTIFF
BISHAR ADAN FARAH 5TH PLAINTIFF
NORTHERN TAAJ LOGISTICS LIMITED 6TH PLAINTIFF
LOGISTICS LINKS LIMITED 7TH PLAINTIFF**

AND

**ROY HAULIERS LIMITED 1ST DEFENDANT
ISMAIL ABDI MOHAMED 2ND DEFENDANT**

AND

**SARR FREIGHTS CORPORATION INTERESTED PARTY
COMPACT FREIGHT SYSTEMS INTERESTED PARTY
KENYA REVENUE AUTHORITY CUSTOMS INTERESTED PARTY**

RULING

1. For ruling is the Plaintiffs' Notice of Motion Application dated 19th September, 2024. The application is brought pursuant to the provisions of sections 1A, 1B, and 63 (c) and (e) of the [Civil Procedure Act](#), Order 40 Rule 3 of the Civil Procedure Rules, sections 4, 5 and 28 of the [Contempt of Court Act](#), 2016 and any other enabling provisions of the law. It seeks the following orders: -



- a. Spent;
 - b. That Mr. Shemir O. Yakub, the Director of the 1st Defendant (Roy Hauliers Limited) and Mr. Ismael Abdi Mohamed, the 2nd Defendant herein be cited for Contempt of Court for flagrant deliberate and/or willful disobedience and or breach of the Court Orders issued on the 27th February, 2024;
 - c. That Mr. Shemir O. Yakub, the Director of the 1st Defendant and Mr. Ismael Abdi Mohamed, the 2nd Defendant herein be committed to civil jail forthwith for six (6) months or such other period the court deem fit and appropriate for gross disobedience of the Court Orders issued by this Court on 27th February, 2024; and
 - d. That costs of the application be borne by the 1st and 2nd Defendants in any event.
2. The grounds in support of the application are briefly that on 27th February, 2024, this court issued orders against the 1st and 2nd Defendants that within 21 days, they deposit in court a sum of USD 41,600 and USD 30,000 respectively for each Defendant. It is stated that despite the Defendants being aware of the orders of 27th February, 2024, they have deliberately disobeyed the said orders.
 3. The Plaintiffs add that despite the Defendants being reminded of the said orders, they have deliberately refused to comply and obey them. They contend that the continued deliberate disobedience of the court orders has jeopardized the matter, exposed the court to ridicule, gravely prejudiced the Plaintiffs to great financial difficulties.
 4. According to the Plaintiffs, it is in absolute interest of protecting and safeguarding the integrity of the court processes and in having the sanctity of court orders upheld that Mr. Shemir O. Yakub, the director of the 1st Defendant and Mr. Ismael Abdi Mohamed the 2nd Defendant be made to suffer heavy consequences for such flagrant disobedience of the Court Orders on its part.
 5. The application is supported by the affidavit sworn by the 1st Plaintiff of even date. Other than the annexures, the affidavit restates more or less the grounds in support of the application and I do see it prudent to rehash the same.
 6. The application is opposed by the 1st Defendant through 16 – paragraphs replying affidavit dated 29th October, 2024 sworn by Shemir Omar Yakub. In a nutshell, he gave a genesis of how the issue arose. He states that the Plaintiffs entered into an agreement with the Interested Party for transportation of goods from the Port of Mombasa to Abiyei, Sudan.
 7. He breaks down the agreed percentages on the terms of payment at the time of loading, upon reaching Malaba Border, upon reaching Nimule Border and finally at the final destination. He states that the 1st Defendant then sub-contracted third parties with an agreement of USD 4,000 per truck and further, percentages on the various stages were agreed.
 8. He contends that upon loading, the 1st Defendant requested for its 30% from the 1st Interested Party on 23rd December, 2023 but the same was only wired on 29th December, 2023 leading to a 7 days' delay. According to him, the delay precipitated delay charges by the transporters and overnight charges at the Port. Due to the delay, an addendum to the first agreement was prepared to cover the delay charges.
 9. He avers that though the transporters were paid part of the money wired, they refused to commence the journey unless the delay charges were paid yet they had not received the same. As a result of the delay, various cases including the present one were instituted. He states that for the goods to reach



their destination, the 1st Interested Party started paying the transporters directly without having any contract with them.

10. He adds that after much difficulty, the goods finally reached their destination but the 1st Interested Party is yet to pay them to date despite numerous reminders. This according to him has forced it to institute legal proceedings against the 1st Interested Party to insulate them from potential cases likely to be filed by the aggrieved transporters.
11. He avers that the 1st Defendant has not deliberately ignored or looked down upon the court's order but its hands are tied due to lack of funds and non-payment by the 1st Interested Party. He requests the court to restructure the same since the goods already reached their destination and the 1st Interested Party started paying transporters directly after the commencement of court cases and delays.
12. He adds that its instructing client has raised concerns on the security and status of the cargo and it is thus imperative that the said cargo be released forthwith for transport to the intended destinations. He concludes that the application dated 19th September, 2024 is devoid of merit and ought to be dismissed with costs. The 2nd Defendant did not file any response.
13. Directions were taken to have the application canvassed by way of written submissions. Both parties duly complied with the directions. The Plaintiffs' submissions are dated 15th October, 2024. They rely on among other cases, Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another [2005] eKLR. The 1st Defendant's submissions are dated 20th January, 2025. It places reliance in the case of Commodity House Limited & Another v The Kenya Sugar Board [2011] eKLR.
14. I have given due consideration to the said submissions and I am grateful for the industry the parties have applied in articulating their rival positions.

Analysis and Determination

15. I have carefully considered the application, the response, the parties' respective rival submissions, the authorities cited as well as the law and the only issue for determination is whether the Plaintiffs have proved contempt as against the Defendants. Corollary to this is the issue of costs.
16. Before I venture to the issues identified, I note that among the provisions relied on in the application are some provisions in the [Contempt of Court Act](#) that the [Contempt of Court Act](#), 2016. However, it should now be common knowledge that this Act was declared unconstitutional in the case Kenya Human Rights Commission v Attorney General & Another (2018) eKLR. Therefore, it has no applicability whatsoever in the present case.
17. The Act having been declared unconstitutional, does it mean that courts lost their power to punish for contempt? The answer to this question is found in the case of Republic v Kajiado County & 2 others Ex-parte Kilimanjaro Safari Club Limited [2019] eKLR where the court held as follows: -

“...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.”



18. The effect of declaration of this Act as unconstitutional was to reinstate section 5 of the *Judicature Act* which gives this court and the Court of Appeal the power to punish for contempt. Further, this court derives the power to punish for contempt in section 36 (1) of the *High Court (Organization and Administration) Act*.
19. Having said as above, it is not in dispute that this court made certain orders on 27th February, 2024. Among the orders made was one directing the 1st and 2nd Defendants to deposit in court USD 41,600 and USD 30,400 respectively within twenty - one (21) from 27th February, 2024 days. It is also not in dispute that the said order has not been complied to date. Thirdly, there is no doubt that the parties who the order was directed to were and are still aware of the orders of the court.
20. There is a plethora of authorities on the powers of court to punish for contempt and I cannot purport to re-invent the wheel. Mohamed, J (as he then was) in the case of Econet Wireless (supra) succinctly set out what contempt is and how to deal with the same. The Court of Appeal in Shimmers Plaza case has also added its voice on what is needed to satisfy oneself of existence of contempt.
21. In this case, I shall only concern myself with the essentials of contempt. Mativo J. (as he then was) 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: -
- “...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.”
22. From the 1st Defendant's response, I have no doubt that the terms of the order issued on 27th February, 2024 were clear, unambiguous and binding, he had knowledge of the same, he is in breach and it was deliberate. Despite service of the application upon the 2nd Defendant, he chose not respond. When the orders were made, he was fully represented. I have said enough to show that the motion is well taken.



23. The 1st Defendant’s director cannot be heard to say that their hands are tied. It has been held that it is not enough that one cannot comply with court orders. Court orders are not mere suggestions or invitation to treat. If one finds difficulty in complying, one is expected to approach the court and state the difficulty. You do not wait until you are cited then you start giving excuses.
24. Having found as above, can the court proceed and cite the Defendants as a matter of course as suggested by the Plaintiffs? This was recently settled by the Apex Court in the case of Githiga & 5 others v Kiru Tea Factory Company Ltd [2023] KESC 41 (KLR) (Judgement) where it was held thus: -
- “...Due to the quasi-criminal nature of contempt proceedings and the gravity of the consequences that flowed from contempt proceedings, courts were required to adhere to the principles of natural justice, procedural fairness, and the right to a fair hearing. That was because, in contempt proceedings, the liberty of the subject was usually at stake, therefore, if a party alleged breaches of his fundamental rights and freedoms as envisaged under the Constitution albeit, at the Court of Appeal, the Supreme Court could not afford to shut its eye to such serious legal issues that called for settling as the apex Court...”
25. Having found the Defendants in contempt, their right to a fair hearing must be protected. Before any action is taken against them, it is imperative for this court to hear their part of the story. This being the case, the Defendants shall be required to appear before this court to show cause why they should not be committed to civil jail for disobeying the court orders of 27th February, 2024.
26. On costs, the same follows the event. However, it must be remembered that award of costs is discretionary and the court reserves the discretion whether to award the same or not. Though the application has succeeded, final orders on it are yet to issue. As such, costs shall await the outcome of the notice to show cause.
27. The upshot of the foregoing is that the court renders itself as hereunder: -
- a. The Notice of Motion Application dated 19th September, 2024 has merits and the same is hereby allowed in terms of prayer (2) of the motion;
 - b. The Contemnors herein, Mr. Shemir O. Yakub, the Director of the 1st Defendant and Mr. Ismael Abdi Mohamed, the 2nd Defendant shall be required to appear before this court in person to show cause why they should not be committed to civil jail on 16/07/2025.
 - c. Costs to abide the outcome of the Notice to Show Cause.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 29TH DAY OF MAY, 2025.

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F. WANGARI

JUDGE

In the presence of;

Mr. Wafula Advocate for the Plaintiffs

M/S Manyonge Advocate h/b for M/S Abutika Advocate together with

M/S Gatimu Advocate h/b for Mr. Mwanzia Advocate for the 1st Defendant

N/A by the 2nd Defendant



N/A by the Interested Parties

M/S. Norah, Court Assistant

