



**Doshi & Company Limited v Unibee Construction Company Limited & 2 others
(Civil Suit E241 of 2021) [2025] KEHC 11346 (KLR) (Civ) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11346 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL SUIT E241 OF 2021

JN MULWA, J

JULY 31, 2025

BETWEEN

DOSHI & COMPANY LIMITED APPLICANT

AND

UNIBEE CONSTRUCTION COMPANY LIMITED 1ST RESPONDENT

JOSEPH KARUORO CLAUDIO 2ND RESPONDENT

JOHN MAINA KIMONDO 3RD RESPONDENT

RULING

1. Before the Court for determination is the motion dated 26/04/2024 filed by Doshi & Co. Ltd (hereafter the Plaintiff/Applicant) as against Unibee Construction Co. Ltd, Joseph Karuoro Claudio and John Maina Kimondo (hereafter 1st, 2nd and 3rd Defendant/Respondent) and is premised on Section 1B, 3A, 38 & 63 of the [Civil Procedure Act](#) (CPA) and Order 51 Rule 1 of the [Civil Procedure Rules](#) (CPR) seeking inter alia:
 - i. That this Honorable Court be pleased to find Unibee Construction Co. Ltd, Joseph Karuoro Claudio and John Maina Kimondo (hereafter the 1st, 2nd & 3rd Respondents) in contempt of Court order issued on 03/08/2022.
 - ii. That directors/shareholders of Unibee Construction Co. Ltd, thus Joseph Karuoro Claudio and John Maina Kimondo be summoned to this Court to show cause why they should be committed to civil jail for a period not exceeding six (6) months for having disobeyed and contemned the Court order issued on 03/08/2022.



- iii. That in default of prayer 2 being met, the Respondent be committed to civil jail for a period not exceeding six (6) months for contempt of Court having deliberately disobeyed orders of the Honorable Court order issued on 03/08/2022.
 - iv. That any other order or further orders of the Court geared towards protecting the dignity and authority of this Court.
 - v. That the Respondents do pay the costs of the application in any event.
2. The motion is premised on grounds at the supporting affidavit sworn by Choudahry Mahesh Prasad of even date. The kernel of his deposition is a consent judgment in the total sum of Kshs. 28,000,000/- was entered on 18/07/2022 in favour of the Applicant as against the Respondents with an order issued and extracted on 03/08/2022. That the Respondents have failed to comply with the order prompting the Applicant's counsel to take out a decree on 07/06/2023.
3. The Applicant adds that despite obtaining warrants of attachment in respect of the decree as against the Respondents, the appointed auctioneers have been unable to recover anything to attach or auction towards recouping the decretal sum yet they continue to operate their business despite being fully aware of the consent order. He maintains that the Respondents have deliberately disobeyed the Court consent order of 18/07/2022 therefore the dignity of the Court has greatly suffered given the Respondents non-compliance. In conclusion, he states that it is essential for the Court to commit the contemnors to civil jail to compel the obedience of Court orders.
4. Unibee Construction Co. Ltd, Joseph Karuoro and John Maina Kimondo (the Respondents) oppose the motion by way of grounds of opposition dated 25/07/2024. They take issue with the motion on grounds that -: it is misconceived, defective, incompetent, bad in law, mischievous, frivolous, vexatious and an abuse of the Court process; that the Applicant has not exhausted all modes of execution; that the motion is contrary to the Section 38 and 40 of the [CPA](#); that the Applicant has not demonstrated any fraudulent and or dishonest conduct on the part of the Respondents; and that orders sought herein are orders of last resort.
5. In rejoinder, Choudahry Mahesh Prasad deposes that upon carrying out investigation, the Applicant established that the Respondents do not own any property upon which execution can be levied. He goes on to state that the Applicant has a right to choose any mode of execution prescribed in Section 38 of the [CPA](#) and that execution by way of attachment of the Respondents movable property has been unsuccessful. He surmises by deposing that it is in the interest of justice that this Court intervenes and holds the Respondents liable to settle the owed decretal sum.
6. Directions were taken on disposal of the motion by way of written submissions. The parties duly complied. That said, having duly considered the rival material and submissions on record, this Court postulates that the issues for determination concern-:
 - a. Whether the Respondents ought to be held in contempt of the orders of this Court issued on 03/08/2022?
 - b. Whether the Respondents upon being held in contempt, they ought to be summoned to Court to show cause why they should not be committed to civil jail for a period not exceeding six (6) months for having disobeyed and contemned the Court order issued on 03/08/2022?
 - c. Who ought to bear the costs of the motion?
7. The Court proposes to address the issues contemporaneously.



Section 38 and 63 of the [CPA](#) have been relied upon by the parties. Section 38 provides that;

Subject to such conditions and limitations as may be prescribed, the court may, on the application of the decree-holder, order execution of the decree—

- a. by delivery of any property specifically decreed;
- b. by attachment and sale, or by sale without attachment, of any property;
- c. by attachment of debts;
- d. by arrest and detention in prison of any person;
- e. by appointing a receiver; or
- f. in such other manner as the nature of the relief granted may require:

Provided that where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the court, for reasons to be recorded in writing, is satisfied—

- (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree—
 - i. is likely to abscond or leave the local limits of the jurisdiction of the court; or
 - ii. has after the institution of the suit in which the decree was passed, dishonestly transferred, concealed or removed any part of his property, or committed any other act of bad faith in relation to his property; or
- (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree, or some substantial part thereof, and refuses or neglects, or has refused or neglected, to pay the same, but in calculating such means there shall be left out of account any property which, by or under any law, or custom having the force of law, for the time being in force, is exempt from attachment in execution of the decree; or
- (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

8. Section 63 [CPA](#) provides that :-

In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed

—



- (a) issue a warrant to arrest the defendant and bring him before the court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to prison;
- (b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the court or order the attachment of any property;
- (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold;
- (d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;
- (e) make such other interlocutory orders as may appear to the court to be just and convenient.

9. Ordinarily, applications for contempt are lodged pursuant to Section 5 of the *Judicature Act*. Black’s Law Dictionary (Ninth Edition), defines contempt of court as “conduct that defies the authority or dignity of a court.” The Court of Appeal in *Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others* [2014] KECA 840 (KLR) held that in punishing contempt, the Court exercises ordinary criminal jurisdiction. In *Stewart Robertson v Her Majesty’s Advocate*, 2007 HCAC 63 it was stated that:

“Contempt of Court is constituted by conduct that denotes willful defiance of or disrespect towards the Court or that willfully challenges or affronts the authority of the Court or the supremacy of the law, whether in civil or criminal proceedings.”

- 10. In the Ahmad Abolfathi Mohammed Case, the Supreme Court explained the rationale for the high standard of proof of contempt and why Court’s punish for contempt. It observed in part that not only do contemnors demean the integrity and authority of Courts, but they also deride the rule of law of which must not be condoned.
- 11. With the above in reserve, in urging the Court to allow the motion the Applicant has summarily submitted that parties to a suit ought to obey Court orders whereas failure to do so amounts to contempt of Court; that by dint of Section 38 and 40 of the CPA the Court is vested with authority to commit the Respondents to civil jail for contempt of its orders.
- 12. It was further submitted that whereas the Respondents contended that the Applicant has not exhausted avenues of execution, the former have failed to show that they have any property or assets that could be attached in execution to realize the decretal sum.
- 13. On the part of the Respondents, while calling to aid the decisions in *Jiang Nan Xiang v Cok Fas-st Company Ltd* [2018] eKLR, *Jayden Limited v Bradley Limited* [2021] KEHC 127 (KLR), *Peter O. Ngoge t/a P. Ngoge & Associates v Ammu Investment Co. Limited* [2012] eKLR, *Aster Holdings Ltd v City Council of Nairobi & 4 Others* [2019] eKLR, *Kenjab Motors Ltd v Wanjala t/a Zeki Motors; Awili (Objector)* [2023] KEHC 20184 (KLR), *George Arab Muli Mwalabu v Senior Resident Magistrate Kangundo & 2 Others*; *Festus Mbai Mbonye (Interested Party)* [2019] eKLR and *Jane Wangui Gachoka v Kenya Commercial Bank, Petition No. 51 of 2010* it was submitted -; that the Applicant has not exhausted the modes of execution provided for in Section 38 and 40 of the CPA.



14. Order 22 Rule 35 of the CPR provides that a decree holder is required to apply for examination of the judgment-debtor of whether the latter has any and what property or means of satisfying the decree. The 1st Respondent is a limited company. It must first apply for lifting of the corporate veil before going after the personal liability of the individual directors.
15. Thus, in order to contextualize the Applicant's motion, the Court must revisit the record and material presented by the rival parties. In 2021, the Applicant filed suit against the Respondents seeking inter alia judgment in the sum of 34,114,664/-. On 18/07/2022, the suit was compromised by way of a consent order in which judgment was entered in favour of the Applicant as against the Respondents in the sum of Kshs. 28,000,000/- that was to be settled in instalments. (Annexure CMP-3). Subsequently, on 07/06/2023, the Applicant extracted a decree (Annexure CMP-4a) pursuant to the aforesaid consent order whereafter the same was duly served upon the Respondents. Later, on 12/07/2023 (Annexure CMP-5) and 20/10/2023 (Annexure CMP-5) the Applicant took out warrants of attachment of moveable property as against the 1st Respondent. It is as a consequence of the Applicant's inability to execute the warrants of attachment that it moved the Court vide the instant motion.
16. Firstly, it is trite that contempt proceedings are proceedings in personam, to wit, it is confounding why the Applicant would urge the Court to find the 1st Respondent in contempt, an abstract person de jure. Therefore, seeking contempt orders against the 1st Respondent would be misplaced at this juncture.
17. Secondly, the 1st Respondent is a limited company. The Applicant must first apply for lifting of the corporate veil before going after the personal liability of the directors. The Respondents were jointly sued with resultant decree being jointly and severally as against the Respondents. The Respondent's contestation concerning the Applicant's failure to lift the corporate veil would seem to be late in the day given that the 2nd and 3rd Respondent being directors of the 1st Respondent (Annexure CMP-1b) ought to have challenged at the onset of the suit their inclusion in the suit on the premise of the landmark pronouncement in the Salmon v Salmon Case.
18. The 2nd and 3rd Respondents abetted the proceedings as filed leading to a consent judgment jointly and severally as between themselves and the 1st Respondent. Consequently, the said objection at this stage does not hold any water, being too late in the day.
19. It is not disputed that the consent order and resultant decree is a money decree upon which the Applicant proceeded to institute contempt proceedings as against the Respondents. While the Court agrees that there was an order of this Court that resulted in a decree, contempt proceedings serve the purpose of kerbing conduct that defies the authority and dignity of a Court. Modes of execution are clearly provided at Section 38 of the CPA.
20. The Applicant contends that attempts at attachment of moveable and immovable property belonging to the Respondents have borne no fruits. An investigation report (Annexure CMP-5) evidenced proof that the 1st Respondent did not own any property capable of being attached for purposes of execution. As judgment was jointly and severally against the Respondents, there is still opportunity for the Applicant to establish or examine the 2nd and 3rd Respondents' ability to settle the decretal sum and or exhaust the provisions of Section 38 of the CPA.
21. Nevertheless, it can perceivably be discerned by the Applicant's motion that it seeks to have the 2nd and 3rd Respondents held in contempt for failure to settle a money decree, notwithstanding the manner in which the decree was arrived at. Given the nature of contempt of Court proceedings, this Court is



inclined to agree with the rendition of Korir, J. (as he then was) in C C M v MNM [2018] KEHC 3102 (KLR) wherein he succinctly observed that -;

“I am of the opinion that parties should be slow in resorting to the Contempt of Court Act where there are other procedures for enforcing court orders. In seeking to enforce a monetary decree, for example, I do not see why a decree holder should forego the procedure provided in the Civil Procedure Rules, 2010 and seek to have the judgement debtor taken through contempt of court proceedings which are criminal in nature. The impression one gets in such a situation is that the decree holder is driven by ill motive and not the desire to harvest the fruits of the judgement. In the circumstances of this case, I find that the Applicant ought to have resorted to the rules governing execution of decrees as enacted in the Civil Procedure Rules, 2010.”

22. While arrest and detention in prison of a judgment-debtor is duly recognized as a mode of execution by dint of Section 38 of the CPA and Order 22 Rule 26 of the CPR, the Act and Rules do not contemplate arrest and detention by way contempt of Court proceedings in respect of a money decree as a mode of execution. Suffice to say, if it was the Applicant’s intent to have the 2nd and 3rd Respondents arrested and detained for failing to settle a money decree the Applicant ought to have either availed itself to the provisions of Order 22 Rule 31 or Order 22 Rule 35 of the CPR and not Contempt of Court as sought vide the instant motion.

23. Hon. Odunga, J, (as he then was) in the case of Elizabeth Munge & another v Elizabeth Mazibo Kiberenge & 2 others [2021] KEHC 9610 (KLR) purposefully observed that-

“...the course of committal to civil jail will only be resorted to in appropriate cases and the guidelines for determining whether a particular case is appropriate for such course must necessarily depend on whether the conditions stipulated under Section 38 of the Act have been fulfilled.”

24. Earlier, the Court in the case of Braeburn Limited vs. Gachoka and Another [2007] 2 EA 67 intricately addressed itself to the question of arrest, detention, committal to civil jail and contempt of Court by stating as follows -;

“Rules 18 and 32 of Order 21 of the Civil Procedure Rules do meet and in a very special way in relation to a debtor surpass the standard laid down in the Constitution for the deprivation of a person’s liberty. This is so because the deprivation of a person’s liberty whether for contempt of court (under section 72(1)(b) of the Constitution), or for default to pay a money decree, is in the nature of criminal proceedings and for a person to suffer the loss of liberty, it must be in the words of that hackneyed phrase, be proved beyond reasonable doubt, that he has the means to pay but that he has refused and/or neglected to pay...

25. The court confirmed that:

“To Conform with that high standard proof, the discretion conferred upon the court to either issue a warrant of arrest and instead issue a notice calling upon the judgement to appear before the court on a day to be specified in the notice and show cause why he should not be committed to prison, must be construed, strictly, that is to say mandatorily, that upon an application by a decree holder for execution of a money decree by way of arrest and committal to prison the court to which an application is made for issue of a warrant of arrest shall in the instance first issue a notice to the judgement debtor to appear in court and show



cause why he should not firstly be arrested, and secondly, committed to prison. That is the first step towards the execution of a decree for payment of money...

26. The second step the court added is the examination of the
27. judgement debtor when he appears in court. Of course if he does not appear, the court issuing the notice in the first instance is at liberty to issue a warrant of arrest and if arrested, the judgement debtor may be detained in prison pending his appearance in court and may be released upon provision of security to ensure his attendance or appearance in court...If however the debtor appears to the notice to show cause, which is mandatory, in terms of the said Order 21, rule 35, or pursuant to his arrest and appearance before he can be committed to prison, it is the duty of the decree holder (who has sought the arrest and committal of the judgement debtor to prison) to satisfy the court that the judgement debtor is not suffering from poverty or any other sufficient cause and is able to pay the decretal sum that:-
- i. the judgement debtor, with the object or effect of obstructing or delaying the execution of the decree:
 - a. is likely to abscond or leave the local limits of jurisdiction of the Court;
 - b. has, after the institution of the suit, in which the decree was passed, dishonestly transferred, concealed or removed any part of his property or committed any other act of bad faith in relation to his property; or
 - ii. The judgement-debtor has or has had since the date of the decree , the means to pay the amount of the decree, or some substantial part thereof and refuses or neglects or has refused or neglected, to pay the same, but in calculating such means there shall be left out of account any property which is exempted from attachment, in execution of the decree; or
 - iii. that the decree is for a sum for which the judgement-debtor was bound in a fiduciary capacity to account (trustees or persons holding moneys in a professional capacity or in trust)...
28. In essence, the judgement debtor should be examined in the manner envisaged in Order 21, Rule 36 as to the debtor's total wealth and indebtedness to determine the judgement debtor's total ability or inability to pay and whether such inability to pay is from poverty or other sufficient cause. It is only after the court is satisfied of these matters, after subjecting the judgement-debtor to due process in the manner construed, the requirements of mandatory notice, before a warrant of arrest may be issued for his arrest and compulsion to attend or appear before a court can decree for payment of a money debt be executed upon a judgement debtor by way of arrest and committal to prison...
29. The execution of a judgement decree by way of arrest and committal to prison is extreme in nature. It deprives a citizen of his liberty, to do so, the highest standards, that is to say, the constitutional safeguards as to due process by way of notice of intended execution of the decree by way of arrest and committal be given to the judgement debtor as a first step and as a second step, a due inquiry and satisfaction to the court, by the decree holder, as to judgement debtor's ability to pay and refusal and/or neglect to pay, and therefore the necessity to punish him for contempt of a court order by depriving him of his liberty...
30. It is clear under both section 38 of the *Civil Procedure Act* and Order 21, rule 35(1) that no judgement-debtor will, on account of his inability from poverty or other sufficient reason, be arrested and committed to prison...The section is not vindictive and the Court, in the exercise of its discretion would not order the imprisonment of a defaulting trustee unless it was likely to be productive of payment..."



31. The Court believes it has reasonably addressed itself on the question whether the reliefs as sought by the Applicant can be issued in the circumstances, and comes to a finding that the orders sought by the Applicant cannot be granted for being inappropriate and premature in the circumstances.
32. For the aforestated, the application dated 26/04/2024 is dismissed with no orders as to costs.
Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF JULY, 2025.

.....

JANET MULWA.

JUDGE

