



**Maramoja Transport Ltd v Makini School Ltd (Civil Suit E167 of 2023)
[2024] KEHC 846 (KLR) (Commercial and Tax) (30 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 846 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E167 OF 2023
FG MUGAMBI, J
JANUARY 30, 2024**

BETWEEN

MARAMOJA TRANSPORT LTD PLAINTIFF

AND

MAKINI SCHOOL LTD DEFENDANT

RULING

1. The parties herein entered into a transport service agreement dated 31st March 2022 for provision of school bus transport services. The plaintiff avers that the defendant, in breach of the said agreement, hired third parties to provide transport services. Aggrieved by this action the plaintiff instituted this suit vide a plaint dated 20th April 2023.
2. Alongside the plaint, the plaintiff filed an application dated 20th April 2023 (the 1st application) seeking interim relief restraining the defendant from interfering or terminating the transport service agreement. This application was opposed by the defendant through a replying affidavit dated 18th May 2023. The gist of the defendant's case was that the plaintiff had obtained the interim orders on 26th April 2023, through material non-disclosure of the fact that the transport agreement had already been terminated. Further, that a similar application had been filed and dismissed by this Court.
3. The defendant also filed the application dated 2nd May 2023 (the 2nd application) seeking to set aside the ex-parte interim orders issued on 26th April 2023. This application was opposed by a replying affidavit sworn on 9th May 2023, taking issue with the termination of the contract by the defendant. The 3rd application was filed on 15th May 2023 by the plaintiff seeking to have the Regional Director of the defendant cited for contempt of court for disobeying the court orders of 26th April 2023.



Is the defendant guilty contempt of court? The application of 15th May 2023

4. For good order the application for contempt shall take precedence over the other two applications. The plaintiff argues that the interim orders of 26th April 2023 had the effect of halting the engagement of third parties by the defendant and terminating the contract, pending the hearing and determination of the application by plaintiff. The said orders were extracted and served on the defendant's Regional Director by email on 4th May 2023.
5. The application is opposed through a replying affidavit sworn by Horace Mthombeni, the Regional Managing Director of the defendant on 18th May 2023. The gist of the defendant's case is that there indeed was a contract between the parties, which contract was terminated at the instance of defendant following gross violation by the plaintiff. The contract was terminated on 3rd April 2023 and the defendant immediately engaged alternative service providers.
6. The defendant does not deny service of the court orders but maintains that the said orders were obtained out of willful non-disclosure of the fact that a similar application had been made and dismissed by this court in HCCOMMISC E294 of 2023 and further that the contract had been terminated before the said order was issued.

Analysis

7. I have considered the pleadings, submissions and evidence presented by the parties with respect to this application. It is important to recall that on 9th November 2018, the High Court in Kenya Human Rights Commission V Attorney General & Another, [2018] eKLR nullified the [Contempt of Court Act](#). The result of this is that Courts reverted to the provisions of the law that operated before the enactment of the Contempt of Court of Act, so as to avoid a lacuna in the enforcement of Court's orders. (See amongst others, Republic V Kajiado County & 2 Others ex parte Kilimanjaro Safari Club Limited).
8. For these reasons therefore, the power to punish for contempt of court is as provided for in section 5(1) of the [Judicature Act](#) in the following terms:

“The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.”
9. The rationale for the power to punish for contempt of court was well enunciated in Econet Wireless Kenya Limited V Minister for Information and Communication of Kenya Authority, [2005] eKLR by Justice Ibrahim (as he then was) where he found that:

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.”
10. In Samuel M. N. Mweru & Others Vv National Land Commission & 2 Others, [2020] eKLR, [Mativo, J (as he then was), citing with approval from Contempt in Modern New Zealand (available at



ip36.publications.lawcom.govt.nz) held that in order to succeed in civil contempt proceedings, the applicant has to prove the following four elements to the required standard:

- i. That the terms of the order were clear and unambiguous and were binding on the defendant;
 - ii. That the defendant had knowledge of or proper notice of the terms of the order;
 - iii. That the defendant has acted in breach of the terms of the order; and
 - iv. That the defendant's conduct was deliberate.
11. The evidence on record reveals that a letter dated 3rd April 2023 signed by the regional Managing Director of the defendant was sent to the plaintiff on even date. The letter which was captioned Termination of the Transport Service Agreement Dated 31st March 2022 invoked clause 18.2.1 of the said contract in terminating the contract with immediate effect.
 12. I must therefore agree with the defendant that the orders that the plaintiff sought to have enforced against the defendant had been overtaken by events since the contract had been terminated before the Court order. It is unfortunate that even with this knowledge the plaintiff still persisted in seeking orders that it knew were in vain.
 13. Applying the principles discussed previously to the facts of this case, I am therefore not persuaded that the plaintiff has demonstrated that the defendant was in contempt of any court order. I decline to grant the prayers sought in the application of 15th May 2023.
 14. Having so found, and in order to save on scarce judicial time, it follows that the application filed by the defendant on 2nd May 2023 seeking to set aside the ex parte orders of 26th April 2023 is successful for the same reasons that defendant was not in contempt of any court orders since the contract had been terminated and other service providers engaged. The application dated 20th April 2023 filed by plaintiff in as far as it seeks injunctive reliefs restraining defendant from terminating the said transport service agreement and engaging third parties to offer transport services to defendant is also overtaken by events.

Determination

15. The upshot of this is that the plaintiff's contempt application dated 15th May 2023 is dismissed with costs to the defendant. The defendant's application dated 2nd May 2023 is consequently successful but with no orders to costs. The application dated 20th April 2023 is also dismissed with costs to the defendant.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 30TH DAY OF JANUARY 2024.

F. MUGAMBI

JUDGE

