



**Remnant Vision School Ltd & another v Star Gold Enterprises Ltd & 3 others
(Civil Appeal E020 of 2024) [2024] KEHC 4623 (KLR) (23 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4623 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CIVIL APPEAL E020 OF 2024
SN MUTUKU, J
APRIL 23, 2024**

BETWEEN

REMNANT VISION SCHOOL LTD 1ST APPLICANT

SOON HEE JOOUNG ALIAS SARAH KIM 2ND APPLICANT

AND

STAR GOLD ENTERPRISES LTD & 3 OTHERS RESPONDENT

RULING

1. There are two applications pending determination. The first application is dated 16th February 2024. It seeks orders to commit the Respondents to civil jail for non-compliance with the court order issued by Hon. Lady Justice Margaret Muigai on 13th February 2024; orders to issue to enable police to retrieve Motor Vehicle Registration No. KCW 831 and restraining orders against the Respondents and their agents from interfering with the property of the Applicants as well as costs of this application.
2. The second application is dated 9th February 2024. It seeks stay of execution of the orders of Hon. R. Kinyatta issued on 2nd February 2024.
3. These two applications are yet to be canvassed. Directions are yet to be issued on how to proceed with the two applications. In the meantime, counsel for the Applicants has moved the court asking for release of the Motor Vehicle referenced above.
4. On 9th April 2024, Mr. O'Makalwala, learned counsel for the Applicants, told the court that he was seeking prayer No. 3 of the Application dated 16th February 2024. He submitted that the court (Muigai, J) granted stay of execution and he notified counsel for the Respondent of the existence of those orders. That despite knowledge of those orders, the Respondents proceeded to attach the motor vehicle in issue in complete disregard of the order of stay.



5. He submitted that this is a liquidated claim, and that counsel has Kshs 700,000 ready to deposit in a joint interest earning account in names of both counsel pending the determination of the appeal. That there will be no prejudice on the part of the Respondent and that the Applicant will suffer prejudice if motor vehicle is not released because the Applicant has to hire transport daily for the running of the school, that the hired motor vehicle must meet the Ministry of Education requirements in terms of sanitization, security of the motor vehicle and satisfaction to the parents that there is no changing of the school transport.
6. The application to release the motor vehicle was opposed by Ms Kisiangani, learned counsel for the Respondents. She submitted that the Respondent has not committed contempt of court; that the order was issued on 15th February 2024 and not as stated 13th February 2024; that interim stay of execution orders were served on the Respondents past office hours on 15th February 2024 at which time the 3rd Respondent was already in receipt of the orders for execution and that the orders were served on the auctioneer on 16th February 2024 at which time attachment had been done.
7. She submitted further that after the orders of the court were served on the Respondents, they have complied with the same and that the Respondent has not disobeyed any court orders to warrant granting of prayer 3 of the Application. She submitted that the Respondent is entitled to execution and that the issue of opening a joint account is not subject to the application of 16th February 2024 but is pleaded in the application dated 9th February 2024.
8. Counsel further submitted that the motor vehicle is not in the custody of the Respondents but was handed over to the 3rd Respondent for safe custody.
9. I have considered the issue raised by the Applicant. It seeks release of the Motor Vehicle named in this ruling. Prayer 3 of the Application dated 16th February 2024 is drawn as follows:

“ 3. That this Honourable Court be pleased to issue an Order according police assistance by any Officer Commanding Station within the vicinity of Motor Vehicle Registration No. KCW 831X. In particular, the Officer Commanding Station-Kitengela Police Station is hereby ordered to enforce compliance by way of this referenced motor vehicle back to the care of the Applicants by any legal means necessary including breaking and entering into any premises. This Order is to be enforced within 48 hours of service to the Officer Commanding Station-Kitengela Police Station.”
10. It is an unclear prayer and does not specifically seek release of motor vehicle but emphasized on police involvement in enforcing removing the vehicle from where it is held back to the Applicants.
11. I have read the email that is meant to have notified the Respondent’s counsel of the court order. It is dated 14th February 2024. It was sent at 16.42pm. That email contains the explanation of what the court order stated and counsel sending that email was acting on the information. It states that: “We are informed that the following orders have been issued in respect to our application.” It is on 15th February 2024 that the extracted court order was sent through email to the Respondent’s counsel. This email was sent at 17.41pm.
12. Counsel for the Respondent claims that the order of the court was sent to them after hours. I agree with her. The order of the court, the extracted order, was sent on 15th February 2024 at 17.41pm.
13. I find it not appropriate to pronounce myself on prayer 3 of the application dated 16th February 2024 before hearing parties fully canvassing the said application. At this stage, it is clear to me that what is under consideration is not the contempt of court application or the other prayers of the application



dated 16th February 2024. It is my considered view that the two applications ought to be argued and a full determination made to avoid making pronouncements that may seem prejudicial to any party.

14. To order release of the motor vehicle before hearing the parties presenting their arguments on the whole of the application dated 16th February 2024 and the one dated 9th February 2024 may be prejudicial to the Respondent. Secondly, the application seeking stay is the one dated 9th February 2024 and this application has not been canvassed.
15. For this reason, I decline to order release of the motor vehicle in question or to order deposit of security until parties address the court on the issues in both applications. Provisions of security relates to stay of execution orders and these are sought in the application dated 9th February 2024 and not prayer 3 of the application dated 16th February 2024.
16. I direct that parties should proceed with taking directions on how to canvass the two pending applications to enable this court to make a full determination. I order so.

DATED, SIGNED AND DELIVERED THIS 23RD APRIL 2024.

S. N. MUTUKU

JUDGE

