



**Juma v Ngao Credit Limited (Miscellaneous Civil Application
E174 of 2024) [2025] KEHC 19059 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 19059 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CIVIL APPLICATION E174 OF 2024**

**AC BETT, J
DECEMBER 19, 2025**

BETWEEN

EDWARD SAYA MALOVI JUMA APPLICANT

AND

NGAO CREDIT LIMITED RESPONDENT

RULING

1. By an Order dated 22nd January 2024 made in Kakamega CMCC No. E237 of 2023, the trial court, *inter alia*, made the following orders: -
 - “ 1. That motor vehicle Registration Number KCR 772G be and is hereby ordered released to the Plaintiff/Applicant.
 2. That the Plaintiff/Applicant be and is hereby ordered to continue making payment if any as per the loan agreement after 4 months from the date of the ruling if the loan amount is outstanding. IF THERE IS NONE the matter be fixed for hearing of the main suit.”
2. It is the Applicant’s contention that the Respondent did not release the subject suit motor vehicle as ordered by court and by an application dated 12th November 2024, the Applicant made the present application that the Respondent be cited for contempt and/or be found to be in contempt of the aforesaid orders and that the Applicant’s Branch Manager, Kisumu, be appropriately punished. The application is supported by Applicant’s Affidavit sworn on the same date as the application where the Applicant avers that he extracted the order and served the same upon the Respondent as reflected in the copies of the Affidavit of Service filed in court. It is his contention that despite being served with the said order and earlier orders made by the trial court in the same matter, the Respondent has not complied with the same.



3. The Applicant posits that since the Respondent had defied the court order which is within the knowledge of its Branch Manager, the Respondent has undermined the authority of the court and the rule of law and should be punished for contempt of court.
4. The application is opposed by the Respondent whose Branch Manager Glyne Omondi swore a Replying Affidavit on 14th December 2024 in which he deponed that the subject motor vehicle has been available to the Applicant since January 2024 and he has been at liberty to pick it from the Blackbird Storage and Auction Yard but has failed to do so. Further the Respondent's Branch Manager avers that the Applicant has failed to obey the orders of the court to continue making monthly payments of the loan after 4 months. He also contends that the order annexed to the Applicant's application does not relate to the proceedings herein.
5. The Applicant filed a Supplementary Affidavit sworn on 6th January 2024 without leave of the court. Nonetheless, the court will take the contents of the said Supplementary Affidavit into consideration in light of the fact that the Applicant is in person and may not be fully appraised of legal procedure.
6. The Applicant has annexed a copy of the Order dated 22nd January 2024, an Affidavit of Service confirming that he effected service of the Order on 2nd February 2024 upon one Mr. Korir, a Manager with the Respondent, and on 6th February 2024, upon Ms. Winny one of the Respondent's Counsel at their Headquarters offices in Nairobi. Annexed to the Affidavit of Service is a copy of the Order with the stamp of Ngao Credit Limited clearly embossed, and an inscription thereon indicating receipts at 3.20 pm on 2nd February 2024 and that service was upon Mr. Korir. A second annexure is a copy of the Order with the Ngao Credit Limited rubber stamp indicating that service was effected upon "Madam Winny Wakili". The Applicant has also annexed a letter from the OCS, Kisumu Central Police Station requesting the OCS, Kakamega Police Station to verify the court order.
7. The application was canvassed through written submissions. Each party filed their written submissions which I have duly considered alongside the pleadings.
8. It is common ground that the subject motor vehicle is under storage in Blackbird Storage and Auction Yard. There is no evidence that the order was ever served upon the Yard. Further, despite claiming that the Respondent's Kisumu Branch Manager mocked him and insinuated that the court orders are papers, there was no concrete evidence to confirm that such an allegation was made by the Respondent's Manager at all. The Branch Manager has a name but his name was not expressly mentioned; nor is there any indication of the Applicant presenting himself at the Yard with the intent of picking the subject motor vehicle and being denied the same. The vehicle is a chattel, and cannot be released except to its rightful owner or the authorised agent.
9. It is important to note that in his ruling dated 22nd January 2024, the trial court directed that the Order be served upon Blackbird Storage and Auction Yard for compliance and that the Defendant/ Respondent do pay the storage charges. The Applicant did not furnish the court with any evidence that he served the Order upon Blackbird Storage and Auction Yard as directed by court. This lends credence to the Respondent's averments that the Applicant has never presented himself for purposes of taking possession of the subject motor vehicle. In the face of the express order by the court, I doubt whether it was imperative that the Respondent demonstrates that it wrote to the Applicant calling upon him to pick the subject motor-vehicle. Service of the Order upon the Storage Yard should have been sufficient to secure the release of the motor vehicle. In the absence of proof of such service, and noting that Blackbird Storage and Auction Yard was not a party to the proceedings, the court cannot presume that the Applicant presented himself and was not allowed to take possession of the vehicle.



10. The threshold in contempt proceedings is quite high bearing in mind that leads to penal consequences. In *Oilfield Movers Limited v. Zabara Oil & Gas Limited* [2020] KEHC 10196 (KLR), the court held thus:-

“It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or notice of the existence of the order of the Court forbidding it. The threshold is quite high as it involves possible deprivation of a person’s liberty.”

11. The chronology of events from the date of issuance of the Order that is the subject matter of the contempt proceedings reveals some disturbing conduct on the part of the Respondent. However, the evidence adduced by the Applicant is insufficient to prove that the Respondent is in contempt. It falls short of the standard of proof required to establish civil contempt. See *Samuel M N Mweru & others v National Land Commission & 2 others* [2020] eKLR and *Henry Musemate Murwa v. Francis Owino, Principal Secretary, Ministry of Public Service, Youth and Gender Affairs* [2021] eKLR.

12. Although I have found that the Applicant has not discharged the burden of proof to warrant the orders sought, I am alive to the fact that court orders must be obeyed. In *Econet Wireless (K) Ltd v. Minister for Information and Communication of Kenya & Another* [2005] KEHC 3180 (KLR), the court held that:-

“... It is essential for the maintenance of the rule of law and good order that the authority and dignity of our courts are upheld at all times. This court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors ...”

In *Hadkinson -v- Hadkinson* (1952) 2 All ER. 567, it was held that:

“It is plain and unqualified obligation of every person against or in respect of, who an order is made by a court of competent jurisdiction to obey it unless and until that 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 an order believes it to be irregular or even void.”

13. The court Order was clear. Contrary to the Respondent’s claim, it was not ambiguous. Even if the Respondent believed the same to be irregular or void, there was an obligation to obey it and the Respondent has only escaped liability by asserting that the Applicant has not presented himself to pick the motor vehicle from the Auction Yard. In the interest of justice, the court makes the following orders:-

- (a) That the application dated 12th November 2024 is dismissed.
- (b) That the order dated 22nd January 2024 be served upon Blackbird Storage and Auction Yard who are expected to release the motor vehicle Registration Number KCR 772G unconditionally to the Applicant within seven (7) days.
- (c) There shall be no order as to costs of this application.
- (d) That the trial court shall address all other issues including who should bear the Auctioneer’s costs in the main suit.

14. Orders accordingly.



DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 19TH DAY OF DECEMBER, 2025.

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A. C. BETT

JUDGE

In the presence of:

No appearance for the Applicant.

Mr. Maina holding brief for Ms. Kamau for the Respondent.

Court Assistant: Polycap.

