



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT HOMA BAY**

**MISCELLANEOUS CIVIL APPLICATION NO. 2 OF 2020**

**DOMINIC MARIGA ONGERA.....APPLICANT**

**VERSUS**

**HOMA BAY COUNTY GOVERNMENT.....1<sup>ST</sup> RESPONDENT**

**CCEM FINANCE ECONOMIC PLANNING & SERVICE DELIVERY.....2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The applicant moved the court by way of Notice of Motion brought under sections 1A and 3A of the Civil Procedure Act CAP.21 laws of Kenya Order 40 Rules 3 (1), (2) & (3) and Rule 4 (1) of the Civil Procedure Rules. He is seeking the following orders:

- a) That this court be pleased to order for the detention in prison of the CCEM Finance Economic Planning &Service Delivery, Homa Bay County for disobedience of court order for stay that was granted on 25<sup>th</sup> June, 2020.
- b) That this court be pleased to order for attachment of the properties for compensation of damages caused to the applicant’s property and for breach of stay of the orders of this court.
- c) That the costs of the suit be provided for.

2. The application was premised on the following grounds:

- a) That this court issued a stay order directed to the 1<sup>st</sup> and 2<sup>nd</sup> respondent dated 25<sup>th</sup> June, 2020 in respect of increase in levy charges for quarry materials being transported outside Homa Bay until this application is heard and determined.
- b) That the 2<sup>nd</sup> respondent was duly served through email [governor@homabay.go.ke](mailto:governor@homabay.go.ke) by the counsel for applicant on 25<sup>th</sup> June, 2020 service acceptable by court but has since disobeyed the same.

3. The respondent opposed the application on the following grounds:

- a) That the applicant has not proved that there was disobedience of the court order;
- b) That the application lacks merit.

4. The applicant has attached receipts issued to various transporters. They range from 21<sup>st</sup> April 2020 and 26<sup>th</sup> June, 2020. Only one receipt was issued a day after the order was given. It was issued on 26<sup>th</sup> June 2020 at 8:14:09. In the case of **Wambui Kiragu (Suing as Administrator of the Estate of the late Samuel Kiragu Michuki) v Governor - Nairobi City County & another [2018] KLR** the court (Mativo J) while addressing the issue of elements of civil contempt of court:

**38. Writing on proving the elements of civil contempt, learned authors of the book *Contempt in Modern New Zealand* [34] authoritatively 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.

5. The applicant herein has not demonstrated that the 2<sup>nd</sup> respondent was in contempt of the court order issued on 25<sup>th</sup> June, 2020. We can assume that the receipt issued on 26<sup>th</sup> June 2020 at 8:14:09 was caused by the chain of communication. We are not told when the court order was served. The application is therefore dismissed with costs.

**DELIVERED AND SIGNED AT HOMA BAY THIS 20TH DAY OF MAY, 2021.**

**KIARIE WAWERU KIARIE**

**JUDGE.**