



REPUBLIC OF KENYA



KENYA LAW
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**Rarlon Kenya Construction Materials Ltd v Feng & 2 others (Civil Suit E824 of 2021)
[2021] KEHC 271 (KLR) (Commercial and Tax) (26 November 2021) (Ruling)**

Neutral citation: [2021] KEHC 271 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E824 OF 2021
A MABEYA, J
NOVEMBER 26, 2021**

BETWEEN

RARLON KENYA CONSTRUCTION MATERIALS LTD PLAINTIFF

AND

PENG JIAN FENG 1ST RESPONDENT

LOU GUANG YANG 2ND RESPONDENT

**POWERCHINA GUIZHOU ENGINEERING COMPANY LTD 3RD
RESPONDENT**

RULING

1. On 1/10/2021, the Court ordered the 1st and 2nd respondent to deposit their passports with the Court. It had been alleged that they were on the verge of escaping from the jurisdiction in order to avoid and evade their legal obligations.
2. The said Order was made in the presence of their legal representative Ms. Onyiego, Advocate. Subsequently, that Order was said to have been served upon the respondents who are Chinese citizens.
3. On 14/10/2021, the plaintiff took out a Motion on Notice of even date under Order 40 Rule 3 of the Civil Procedure Rules and Section 5 (1) of the *Judicature Act*, Order 52 Rule 3 of the Rules of Supreme Court and Section 3A of the *Civil Procedure Act*. In the application, the plaintiff sought that the 1st and 2nd respondent be committed to civil jail for a period of six (6) months.
4. Evidence of the matters complained of were produced. The applicant produced a copy of the subject Order. That since the Order was made in the presence of the plaintiff's advocates, it is tragic that a citizen cannot enforce a right within the jurisdiction. That the said respondents were about to leave the jurisdiction of this Court.



5. I have considered the affidavits on record and the entire record. It is not denied that the subject Order was made and served on 6/10/2021. That the said respondents had been arrested at JKIA while trying to escape to China.
6. It was contended that since the Order was made in the presence of the respondents' advocates which was followed with service of the same upon the respondents on 6/10/2021, the respondents were aware of what they were required of. That despite as aforesaid, the said respondents had failed to comply with the said Order.
7. All the foregoing were matters stated on oath and were not denied or challenged.
8. In the circumstances, I am satisfied that the said respondents were aware of the Order made on 1/10/2021. They have not complied with the said Order in that, they have not deposited in Court their passport as directed in the Order.
9. Accordingly, the said respondents are in contempt of the Order of this court made on 1/10/2021. I allow the application and order that the respondents, Peng Jian Feng and Lou Guang Yang be committed to jail for a term of four (4) months.
10. Consequently, the Deputy Registrar of this Court is directed to issue warrants for their arrest and committal to Kamiti Maximum prison forthwith. The plaintiff will have the costs of the application.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF NOVEMBER, 2021.

A. MABEYA, FCI Arb

JUDGE

