



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CIVIL DIVISION
HIGH COURT CIVIL MISC. APPL. NO. 45 OF 2015

JOSEPH M. NG'ANG'A..... 1ST APPLICANT
JOSEPHINE MUCHINA..... 2ND APPLICANT
SIMON CHEGE 3RD APPLICANT

VERSUS

LAWRENCE MURIUNGI GICHUNGE.....1ST RESPONDENT
STEPHEN NYAMU MBIJIWE
T/A LIFELINE AUCTIONEERS 2ND RESPONDENT

RULING

1. The application dated 23rd August, 2016 principally seeks orders that the 1st Respondents be denied audience before the Honourable Court until such time as the 1st Respondent has purged its Contempt.
2. Secondly, that the Honourable court be pleased to issue the following orders against the Respondents for deliberately defying and disobeying the Court Orders issued by the Honourable Court on 22nd July, 2016:
 - (a) The Respondents be fined such sums of money as this Honourable Court may direct and that the same be paid into court forthwith;
 - (b) Property belonging to the Respondents be attached to the extent of such value as this Honourable court may direct; and
 - (c) The Respondents be committed to and/or detained in prison for a term of six (6) months.
3. The application is premised on the grounds stated therein and is supported by the affidavit of Joan Oburu, the Legal Manager of the Applicants' insurers. It is stated that on 22nd July, 2016, the court issued orders for stay of execution pending appeal and that the auctioneers do unconditionally release the Applicants' motor vehicle. The Applicants' complaint is that the auctioneer failed to comply with the

said orders despite having been served with the court order.

4. The application is opposed. It is stated in the replying affidavit sworn by counsel for the 1st Respondent and another affidavit sworn by the 2nd Respondent Stephen N Mbiyiwe T/a Lifeline Auctioneers that the application is defective as no Penal Notice was served. That the subject motor vehicle has since been released after payment of the storage charges due to the auctioneer and therefore the application has been overtaken by events. It is further stated that the orders herein given on 22nd July, 2016 to the effect that the motor vehicle be released unconditionally created confusion as the storage charges and costs were not addressed until the further directions of 26th September, 2016 were given by the court.

5. The application was canvassed by way of written submissions which I have considered.

6. It's not in dispute that the motor vehicle in question has now been released. The averment by the Respondent concerning the release of the motor vehicle has not been rebutted. Indeed the Applicants' written submissions in paragraph No. 17 concedes to the release of the motor vehicle.

7. The order given on 22nd July, 2016 for the unconditional release of the motor vehicle was served on 28th July, 2016 according to the affidavit of service sworn by the process server on 29th July, 2016. The affidavit of service reflects that service was effected on counsel for the Respondent and on the Secretary/ Receptionist at the auctioneer's office. The Copy of the Order served has not been exhibited. This gives credence to the argument by the Respondent that the Penal Notice was not served.

8. On whether the court order dated 22nd July, 2016 caused any confusion amongst the parties, it is noted that the ruling of 11th November, 2016 is the one that gave directions on the way forward. Confusion may have arisen prior to the said ruling.

9. With the foregoing and coupled with the fact that the motor vehicle has been released, the application is dismissed with costs in cause.

Dated, signed and delivered at Nairobi this 21st day of Feb, 2018

B. THURANIRA JADEN

JUDGE