



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

CRIMINAL REVISION NO 46 OF 2015

IN THE MATTER OF MURANG'A CM TRAFFIC CASE NO 1254 OF 2014

SILAS ANDIEMA.....APPLICANT

VERSUS

1. REPUBLIC

2. ADIEL MATE THOMAS.....RESPONDENTS

R U L I N G

1. On 10/02/2016 I permitted the Applicant herein to urge his application for revision. The revision was heard on 25/05/2016.

2. The revision was sought in respect to certain orders and observations of the trial court at the last paragraph of its judgment delivered on 23/07/2015 in *Murang'a CM Traffic Case No 1254 of 2014 (Republic –vs- Adiel Mate Thomas)*. The 2nd Respondent herein was the accused in that case where he was charged with three offences under the *Traffic Act, Cap 403*. He was acquitted of the charges. In the last paragraph of judgment the trial court stated –

“Going back to the conduct of the Base Commander on how he handled this matter, he is hereby ordered to release the accused’s motor vehicle with immediate effect, failure to which the accused be at liberty to file a civil suit against him in his personal capacity because tax payers’ money cannot be used in defending him, when he blatantly refuses to comply with court orders. It is so ordered.”

3. When the application for revision was initially placed before this court, and after reading the record of the trial court and hearing the parties, the court observed as follows, *inter alia*, in its ***Directions and Orders*** dated 29th and delivered on 30th October 2015 –

“8. It is in this background that I listened with considerable alarm to the submissions of the Applicant’s learned counsel on 26/10/2015. How can anyone who has so flagrantly disobeyed an order of the court even think of coming to this court for succour and vindication of his argument that the order of the trial court for release of the motor vehicle was illegal as it did not provide for payment of towing charges by the owner of the motor vehicle as required, in his view, by section 106(2) (a) & (b) of the Traffic Act?

9. It is not open to anyone, no matter how mighty or low, to choose to obey or disobey a court order. Everyone has a duty to obey court orders, and only then challenge the legality or validity thereof in proper proceedings in that behalf. One cannot flagrantly disobey a court order and then ran to a higher court to challenge its legality! No one will get protection or succour from the very courts that he has treated with such unveiled contempt.

10. This charade must now come to an end. I hereby direct the Traffic Base Commander, Murang'a (whether he be still the Applicant or someone else) to forthwith and unconditionally release to the 2nd Respondent his motor vehicle registration number KQY 862 make Toyota pick-up under pain of being held to be in contempt of court.

11. This order shall be extracted and served upon the Traffic Base Commander, Murang'a and a return of service made and filed. The matter shall be mentioned on 11/11/2015 to ensure compliance, and for further directions. It is so ordered."

4. The 2nd Respondent's motor vehicle was released by a new Base Commander in obedience of this court's order as the Applicant had in the meantime been transferred to another station. So, it is not correct that the Applicant finally purged his callous contempt of the trial court. He did not, and has never been punished for it. In these circumstances, to render a decision upon his application for revision would be to give succour to a person who has displayed utter contempt for the orders of the courts of law from which he now seeks relief. For this court to determine his application on merit would be to encourage more contempt for courts of law. This court will not do that!

5. In the event, the Applicant's application for revision is struck out. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 29TH DAY OF SEPTEMBER 2016

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 30TH DAY OF SEPTEMBER 2016