



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC APPLICATION NO. 123 OF 2015

**IN THE MATTER OF: AN APPLICATION BY THE APPLICANT AN ORDER OF
COMMITAL TO CIVIL JAIL FOR CONTEMPT OF COURT**

AND

IN THE MATTER OF: CIVIL SUIT NO. 1198 OF 2014 RAMANDAHANI

SALIM VERSUS EVANS M.MAABI T/A MURPHY

AUCTIONEERS AND ANOTHER.

RAMADHANI SALIM..... APPLICANT

AND

EVANS M. MAABI t/a MURPHY AUCTIONEERS.....1ST RESPONDENT

WINFRED WANJIKU GAITHO.....2ND RESPONDENT

RULING

1. Although the applicant Ramadhan Salim seeks the court's finding that the respondents Evans M. Maabi t/a Murphy auctioneers and Winfred Wanjiku Gaitho are in contempt of court, in this Ruling I will avoid going into the merits because I am of the view that the applicant is in the wrong forum. I will therefore strike out applicant Notice of Motion dated 25th May 2015.

2. Applicant seeks by that Notice of Motion a finding that the respondents have failed to obey an order of injunction made by magistrates court in Mombasa SRMCC No. 1198 of 2014. The order of injunction, as can be seen from applicant's exhibit "RSK2," was made under Order 40 of the Civil Procedure Rules. When an injunction is issued under Order 40 it is the court that issues that order that is competent to hear an application of contempt when there is a disobedience of the order. It is so provided in Order 40 Rule 3 (1), viz:

(1) In cases of disobedience, or of breach of any such terms the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached,

and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release. (Emphasis mine)

3. Since the applicant by the terms of Order 40 Rule 3(1) is before the wrong forum I shall strike out the application.

4. In the end therefore I do hereby strike out the Notice of Motion dated 25th May 2015, for the reasons stated above, with costs of that application being awarded to the respondent.

DATED and DELIVERED at MOMBASA this 30TH day of JULY, 2015.

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

C/A Kavuku

For Applicant:

For Respondent:

Court

Ruling delivered in their presence/absence in open court.

MARY KASANGO

JUDGE