

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS APPLICATION NO. 105 OF 2013

IN THE MATTER OF AN APPLICATION FOR CONTEMPT PROCEEDINGS

BETWEEN

BENARD KARANJA KINGARA.....APPLICANT

VERSUS

**1. TOM ODONGO
2. ENG. S.K. MBURU.....RESPONDENTS**

RULING

1. The Applicant has filed the motion dated 12th February, 2013 seeking an order of committal to prison against the Respondents for a term of six (6) months and/or attachment of their assets for disobedience of the order made on 1st February, 2013 by the Chief Magistrate's Court in CMCC No. 4290 of 2012, Nairobi compelling them to forthwith release unconditionally motor vehicle registration No. KAB 377Q together with the transfer documents thereof to the Applicant.
2. The reasons advanced in the grounds set out on the face of the application and the supporting affidavit of the Applicant are that the Respondents have defied a mandatory order issued by the Chief Magistrate's Court in CMCC No. 4290 of 2012, Nairobi on 1st February, 2013 compelling the Respondents to forthwith unconditionally release motor vehicle registration No. KAB 377Q together with transfer documents to the Applicant.
3. In response to the application Karisa Iha who is the Director of Legal Affairs at City Council of Nairobi swore a replying affidavit which was filed on 13th March, 2013. He contended that Hon. Waweru J., granted an order of stay of execution of the order of 1st February, 2013 in Nairobi HCCA No. 69 of 2013 and that the only way with which the Applicant can enforce the order of 1st February, 2013 is to challenge the stay of execution granted on 14th February, 2013. He further stated that the suit vehicle has not been vandalised and is not subject to transfer to a third party as alleged. That the Applicant was granted 14 days within which to file a replying affidavit to the application for stay but opted to file this application.
4. I have given due consideration to this application and the documents filed herein. It is not contended that the order of 1st February, 2013 was served upon the Respondents on 7th February, 2013 and it is on the same date that this application was filed that the Respondent moved to this court vide Nairobi HCCA No. 69 of 2013 seeking stay of execution. Clearly between the date of service of the order and 12th February, 2013, the Respondents had defied the orders of 1st February, 2013 which required them to forthwith and unconditionally release motor vehicle registration No. KAB 377Q together with transfer documents to the Applicant and I find that there was contempt. The Respondents were not covered by the stay orders granted on 14th February, 2013. In the circumstances I find merit in this application. Consequently the Respondents are found to be in contempt of the court order issued on 1st February, 2013. Before sentencing I direct the parties to appear before this court on 21.09.2015 to mitigate.

Dated, Signed and Delivered at Nairobi this 31st day of August, 2015

J.K.SERGON

JUDGE

In the presence of:

..... for the Applicant

.....for the Respondent