



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**COMMERCIAL & TAX DIVISION – MILIMANI**

**CIVIL CASE NO. 336 OF 2010**

**GATONYE VICTOR KARIUKI ..... 1<sup>ST</sup> PLAINTIFF**

**PETER NDOLO KILONZO ..... 2<sup>ND</sup> PLAINTIFF**

**FIRST CREDIT LIMITED ..... 3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**JOHN GUTO ..... 1<sup>ST</sup> DEFENDANT**

**MOFFAT OMBOGA ONCHIEKU ..... 2<sup>ND</sup> DEFENDANT**

**DAVID OENGA OINO ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

On 19<sup>th</sup> May, 2010, this Court made an order for the status quo prevailing on that day to be maintained pending the hearing of this matter *inter partes*. The order covered, *inter alia*, a motor vehicle which was said to be with the police at the C.I.D. Headquarters. When the matter came for hearing on 8<sup>th</sup> June, 2010, the order for maintaining the status quo was extended to the next hearing date and it continued to be extended during the next 2 Court appearances.

During the fourth appearance on 16<sup>th</sup> August, 2010, Mr. Mogikoyo appearing for the Defendants under a Certificate of Urgency dated 12<sup>th</sup> August, 2010, alleged that **“...the Defendants were using one of the motor vehicles as if it were theirs and if it was involved in an accident, the loss would be borne by the Plaintiff.”** (Counsel obviously used “Defendants” when he meant “Plaintiffs” and also used “Plaintiff” to mean “Defendants”). The Court directed that the application be served for hearing *inter partes* during the Vacation.

The matter then came before the Hon. Justice Koome on 26<sup>th</sup> August, 2010 and on 17<sup>th</sup> September, 2010 when the learned Judge extended the order for maintenance of status quo to 1<sup>st</sup> October, 2010. On the latter date, this Court again extended the said order to the next hearing date which was 14<sup>th</sup> October,

2010. On that date, Mr. Aduda for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs/Applicants stated from the bar that the motor vehicle in question had been released contrary to the Court order and submitted that the release was a contempt of Court and that Mr. Richard Katola of the Special Crimes Police Unit was served with the Court order but said he could do as he pleased. In his affidavit of service, Mr. Aduda attests that he tendered to Mr. Katola copies of the order dated 6<sup>th</sup> October, 2010 together with an accompanying Penal Notice. Mr. Katola then took and read the aforesaid orders and thereafter threw them back to Mr. Aduda saying that the orders did not concern him and that he could do as he pleased with the motor vehicle then in their custody. Mr. Aduda therefore requested that Mr. Katola be summoned to appear in Court and explain why he should not be punished for contempt.

Appearing for the Respondents, Mr. Onsembe argued that there was no evidence that the Respondents were in contempt and that he didn't know that the subject motor vehicle had been released. He submitted that the allegation was too general and without any particulars on the date; the circumstances under which the motor vehicle was released; and the person to whom it was released. The Court thereupon allowed the Applicant to file a formal application laying contempt charges. The application dated 25<sup>th</sup> October, 2010 was thereafter filed on 28<sup>th</sup> October, 2010. In the said application, the Applicants sought orders, *inter alia*, that –

1. ***The 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents, together with Mr. Richard Katola, the Officer in Charge of Special Crimes Unit, Nairobi Area, be punished for contempt of Court having knowingly and willfully disobeyed the orders of this Honourable Court on the 1<sup>st</sup> October, 2010 requiring the maintenance of status quo with regard to one motor vehicle, a Range Rover Reg. No. KBK 313X by releasing the said motor vehicle instead of keeping it in the custody of the police.***
2. ***That prior to the aforesaid orders Mr. Richard Katola be summoned by this Honourable Court to explain why he willfully and knowingly disobeyed the Court order.***
3. ***That the aforesaid motor vehicle be produced before the Honourable Court and thereafter be held in safe custody at the premises of the 2<sup>nd</sup> Plaintiff/Applicant pending further orders from this Honourable Court, etc.***

When the application came before the Court on 15<sup>th</sup> December, 2010,

Mr. Aduda stated that he still needed to cross-examine Mr. Richard Katola on this matter. Mr. Onsembe, for the Respondents, retorted that Mr. Katola was a Government Officer and that the **Government Proceedings Act** had not been complied with. The Court fixed the application by Chamber Summons dated 25<sup>th</sup> October, 2010 for hearing on 26<sup>th</sup> January, 2011 and directed that summons do issue to Richard Katola to attend Court on the said date for cross-examination. When the matter came for hearing on the aforesaid date, Mr. Richard Katola's name was called out in Court but he was not present. The record shows that summons to attend Court on that date had been served on him on 5<sup>th</sup> January, 2010 at the Nairobi Area Police Headquarters and that he accepted the same, read through and informed the Court Process Server, one Nicholas Openda, that he did not want at all to be a witness in this matter even though he was aware of it. The Court Process Server explained to him the significance of acknowledging service but he adamantly and arrogantly refused to acknowledge service and threw the copies back at the Court Process Server.

Without going into unnecessary details, Mr. Katola's conduct in this matter is high-handed, simply deplorable and cannot be tolerated. Court orders must be obeyed by all and sundry as no one is above the law. Disobedience of Court orders is contemptuous of the Court, and no one will be allowed to conduct himself or herself in any manner which may be construed as defiance of the Court as this is likely to bring into disrepute the dignity of the Court. Mr. Katola is not above the law and the earlier he is brought to Court to show cause why he should not be punished for disobedience of a Court order the better for everybody.

I don't wish to over-emphasize the point, but Mr. Onsembe for the Respondents told the Court on 14<sup>th</sup> October, 2010 that he didn't know that the subject motor vehicle had been released. On 26<sup>th</sup>

January, 2011 however, he said that the application for seizure of the said motor vehicle would not be realized as the same had been disposed off to a 3<sup>rd</sup> party who is not a party to these proceedings. It is not clear how and when he got this information but the said information confirms that the motor vehicle was indeed, released from the protective custody which the Court had ordered for the motor vehicle's preservation. Only Mr. Katola can shade some light on how this came about.

Since Mr. Katola's presence in this Court is necessary to enable the Court decide the next course of action in respect of the said motor vehicle, and since he will not come to Court even on service of summons to do so, the Court is left with no option but to issue a warrant for his arrest in order to ensure that he attends Court as required.

On account of the foregoing, I direct that a warrant of arrest do issue for the arrest of Mr. Katola, the Assistant P.C.I.O., Embu, through the Commissioner of Police. Upon his arrest, Mr. Katola be produced in this Court forthwith to show cause why he should not be punished for disobeying a Court order.

It is so ordered.

**DATED** and **DELIVERED** at **NAIROBI** this 1<sup>st</sup> day of February, 2011.

**L. NJAGI**

**JUDGE**