



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**JUDICIAL REVIEW NO. 51 OF 2009**

**PETER IRUNGU MUGI.....INTERESTED PARTY**  
**J. N. MBUTHIA & CO. ADVOCATES.....PLAINTIFF/RESPONDENT**

**VERSUS**

**ISAAC KINYANJUI KAMAU.....DEFENDANT**

**RULING**

This ruling is the outcome of the Motion dated 2<sup>nd</sup> June 2011 in which **Isaac Kinyanjui Kamau**, the Defendant herein, sought for the following orders:

- 1. That the application herein be certified as urgent and service be dispensed with in the first instance.***
- 2. That the firm of NJERI MBURU & COMPANY ADVOCATES be granted leave to come on record for the Defendant in place of S.W. NDEGWA & CO. ADVOCATES.***
- 3. That this Honourable Court be pleased to stay execution of the Decree herein until further orders.***
- 4. That costs be provided for.***

Prayers 1 and 2 were granted when the Defendant's advocate appeared *ex parte*. The Motion is supported by the affidavit of the Defendant sworn on 2<sup>nd</sup> June 2011. **J. N. Mbutia & Co. Advocates**, the Plaintiff herein, opposed the Motion by filing the replying affidavit of Peter Irungu Mugi sworn on 21<sup>st</sup> June 2011.

The Applicant herein, was provoked to file the Motion when he was served with a notice to show cause why he should not be arrested and committed to civil jail for failing to fully satisfy a decree. It is the Defendant's submission that his constitutional rights will be infringed if the execution process is adopted, in that he may be deprived of his basic freedoms of movements and pursuit of economic, social and cultural development. It is the submission of the Plaintiff/Applicant that the order sought to be executed is for recovery of costs which has nothing to do with a breach of the Constitution.

I have carefully considered the grounds set out on the face of the Motion plus the facts deponed in the affidavits for and against the Motion. I have further considered the oral submissions of learned counsels. The main complaint raised by the Applicant is that his freedom of movement will be curtailed if

the Court makes the order to send him to civil jail for failing to settle a civil debt. In my view the Constitution is meant to protect all persons, like in this case, both the debtor and the creditor. There are many ways in which a litigant can recover his or her debts in execution of an order or decree. One of those methods prescribed by law is committing a debtor to civil jail where it is shown that he/she is avoiding to pay the debts. Though the process of committal will lead to the debtor being imprisoned, that in itself cannot be said to infringe on the constitutional rights of a citizen. It is therefore fallacious for the Applicant to hide behind the Constitution with the aim of avoiding to meet his obligations to settle due debts. On this account, I see no merit in the Motion. The same is dismissed with costs to the Plaintiff/Respondent.

*Dated and delivered at Nyeri this 23<sup>rd</sup> day of September 2011.*

**J. K. SERGON**  
**JUDGE**

In open court in the presence of Mr. Gitonga holding brief Mbutia for the 1<sup>st</sup> Respondent and Macharia holding brief N. Mburu for the Applicant.