



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Appeal 609 of 2009

LINCOLN IRUNGU KAMAU.....APPELLANT
VERSUS
CHARLES MUHA KAMAMIA.....1ST RESPONDENT
WINFRED WAMUYU MUYA.....2ND RESPONDENT

R U L I N G

1. A preliminary objection has been raised to the appellant's amended notice of motion filed on 10th March, 2010 on the ground that the lower court having made a finding of contempt against the appellant, he should be denied a right of audience until he purges his contempt.
2. It was submitted that the orders sought by the appellant for his release would amount to the court upholding the appellant's violations. It was further submitted that this court having discharged the orders of stay of execution it cannot now consider the application for release of the appellant as it would amount to interfering with the process of execution.
3. In support of his submissions counsel for the respondent cited the following cases:
 - (i) ***National Lottery Ltd vs Betting Control & Licensing Board C.A. No.102 of 1999.***
 - (ii) ***Leah Agao Onguto vs Central Organization of Trade Unions HCCC. NMo.1846 of 2009.***
4. For the appellant it was submitted that a contemnor could only be denied audience prior to his committal, and not after committal. It was submitted that it was necessary to have the appellant released to facilitate the hearing of his application. The court was urged not to deny the applicant an opportunity of approaching the court. It was argued that in any case the applicant would suffer the consequences of the order if his application was to fail.
5. I have considered the preliminary objection. I find that it is based on a disputed fact i.e. whether the appellant has been guilty of contempt of a court order. That was an issue in the lower court in respect of which a finding has been made against the appellant hence his committal to civil jail. The appellant's appeal pending in this court is precisely with regard to the trial magistrate's finding that a warrant of arrest should issue against the appellant for his alleged contempt of court. It would not be proper for this court to shut out the appellant without giving him a hearing.
6. Accordingly, I do overrule the preliminary objection and order that the hearing of the amended notice of motion shall proceed on Friday 19th March, 2010.
Dated and delivered this 16th day of March, 2010

H. M. OKWENGU
JUDGE

In the presence of: -
Gitonga & Njenga for the appellant
Mungai for the respondent

Eric - Court clerk