

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 245 of 2008

DOUBLE DRAGON LIMITEDPLAINTIFF

V E R S U S

1. THE TRUSTEES, SISTERS OF IMMACULATE HEART OF

MARY MOTHER OF CHRIST

2 PATRICK EZEKIEL MBOGO

(t/a Target Achievers Auctioneers)DEFENDANTS

PRELIMINARY RULING

As I was preparing the ruling upon the contempt application herein (notice of motion dated 24th September, 2008) it became apparent to me that there is an important issue that has not been addressed in the respective written submissions of the parties. That issue is payment of storage charges for the Plaintiff's goods that were attached in distraint for rent by the 2nd Defendant upon instructions of the 1st Defendant. It is apparent that the 2nd Defendant put these goods into commercial storage, and storage charges will have to be paid before the goods can be retrieved from there. Who will pay?

As far as the 2nd Respondent is concerned, he was executing valid instructions given to him by the 1st Defendant. It is therefore unreasonable to expect him to be out-of-pocket on account of the dispute between the Plaintiff and the 1st Defendant. It would not be just to require him to pay the storage charges in order to release the goods to the Plaintiff. The issue of payment of storage charges is therefore between the Plaintiff and the 1st Defendant.

I hereby invite the two parties to address the court on this issue before I can deliver substantive ruling on the contempt application.

DATED AT NAIROBI THIS 5TH DAY OF MARCH, 2009

H. P. G. WAWERU

J U D G E

DELIVERED THIS 6TH DAY OF MARCH, 2009