

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Misc Appli 350 of 2006

LIFTING EQUIPMENT CO. LTD.....APPLICANT

Versus

DIRECTOR OF SURVEYS & ANOTHER.....RESPONDENT

RULING

By the Notice of Motion dated 22nd August 2007, the Applicant seeks leave of the court to file an Application to commit the Director of surveys for contempt of court orders that were made on 18th December 2007.

The Application is based on the Affidavit of Roshan Merali, the Director of the Applicant and a Statutory Statement. The matter is brought pursuant to Section 5 of the Judicature Act, & S. 3A Civil Procedure Rules.

An Application for leave to commence contempt proceedings should be brought in the same manner as an Application for Judicial Review which is commenced by way a Chamber Summons which seeks leave and after leave is granted, one then files a Notice of Motion. The Application before me is therefore defective.

Besides I do note that the Applicant has not demonstrated that the order of the court of 18th September 2007 was ever served on the Director of Survey. The Applicant purported to refer to an order bearing a stamp, that was allegedly received by the said Director but the same is illegible. Proof of service is normally by way of filing an Affidavit of service annexing the documents that were served and the acknowledgement if any. Only an order is exhibited with an illegible stamp and it is unknown who was served if at all or when and where. In such Application it is mandatory that the person cited for contempt be served personally with the court order and a penal notice, unless the court directs otherwise. For one to be contemptuous of a court order, he must have been aware of the court order and neglected to obey it. In this case there is no evidence of service of the court order on the Director. For the above reasons this Application is dismissed with the Applicant bearing their own costs.

Dated and delivered this 26th day of May 2009.

R.P.V. WENDOH

JUDGE

Present

Ms Kaberia for the Respondent

Muturi: Court Clerk