



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

MISCELLANEOUS CIVIL APPLICATION 82 OF 2008

REPUBLIC APPLICANT

versus

THE TOWN CLERK CITY COUNCIL OF NAIROBIRESPONDENT

EX-PARTE: NJAGI WANJERU practicing as NJAGI WANJERU & COMPANY ADVOCATES

RULING

NJAGI WANJERU who practices under the name of **NJAGI WANJERU & COMPANY ADVOCATES**, obtained judgment against **THE CITY COUNCIL OF NAIROBI** ('the council') on 2/11/2007.

Though the decree was issued on 5/12/2008, his demands for payment fell on deaf ears and he moved this court and obtained the following orders on 5/12/2008:

Ø an order of mandamus to issue directed to the Town Clerk City Council of Nairobi compelling him to forthwith and without delay cause to be paid to the ex-parte applicant the decretal sum of Kshs.4,500,000/= plus the accrued interest of Kshs.577,500.00 thereof as at 1.3.2008 and further accruing interest on the said decretal sum until full and final payment in terms of the court order dated 2nd November, 2007 by Honourable Mr. Justice Azangalala in H.C. Misc. Civil Application No. 366 of 2006 at Milimani (Njagi Wanjeru & Company advocates –vs.- the City Council of Nairobi.)

Ø THAT the costs of this application and the Chamber Summons dated 7th March, 2008 shall be borne by the Town Clerk City Council of Nairobi.

The parties thereafter had their bill taxed by consent in the sum of Kshs.78,780/= all inclusive. Though that consent order was recorded on 23/2/2009, neither the decretal sum, nor the aforementioned costs has been paid to date.

Being aggrieved by the fact that the **Town Clerk City Council of Nairobi** has failed to meet his

obligations under the aforementioned orders, the ex parte applicant moved this court on 2/3/2009, and obtained leave to cite him for contempt of court.

The ex parte applicant has now moved this court and he seeks the following orders:

Ø **THAT an order of committal to prison do issue against the respondent Town Clerk for such period as this Honourable court may deem fit and just and accordingly a warrant of arrest do issue against the said respondent Town Clerk for disobeying the decree herein dated 5.12.2008.**

Ø **THAT in the alternative the respondent Town Clerk's personal goods valued at Kshs.1,000,000.00 be attached upon such terms as this Honourable court shall direct to compel him to obey the decree dated 5.12.2008.**

There is however no doubt that the application was duly served upon the Town Clerk, and that he was very well aware of the orders of this court and what was expected of him. It is nevertheless important to note that the application is not opposed at all. Indeed on the several occasions when the respondent's counsel appeared before the court he sought for indulgence, with promises that he would ensure that payment would be effected within the shortest time possible. His promises have however come to naught, and despite the fact that court orders must be obeyed no matter how obnoxious they might appear to be, the respondent has not only failed to obey, but has not advanced any valid reasons for the said flagrant disobedience.

I therefore find that this application is meritorious and do order that the respondent Town Clerk of the City Council of Nairobi who I find to be in contempt of this court be committed to prison for a term of two months. A warrant of arrest do issue forthwith against him for disobeying orders of this court.

The ex parte applicant shall have the costs of this application.

Dated and delivered at Nairobi this 13th day of October 2009.

JEANNE GACHECHE

Judge

Delivered in the presence of:

For the ex parte applicant –

For the respondent –