



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA
Civil Case 192 of 2009

WILLIAM MWAKANONGO SONA PLAINTIFF

VERSUS

MULONGO PETER MULONGO

T/A MULONGO BUSIEKA &

COMPANY ADVOCATES DEFENDANT

RULING

This is the application dated 17th September 2009 seeking the following orders:-

“1. ***THE RESPONDENT MULONGO PETER MULONGO be committed to prison for a period of 6 months for contempt of court orders given on the 29th April 2009 and issued on 6th May 2009.***

2. ***The Respondent Mulongo Peter Mulongo personal***

property be attached and sequestered for contempt of court and further orders be made against the said Respondent to deposit in court from his personal account the sum of Kshs.450,000/- being the total sum due to the Applicant and/or further orders as the Honourable Court deems fit and appropriate.

3. ***That the costs of these contempt proceedings be borne by the Respondent”***

The present application is being made pursuant to leave granted to the Applicant by **HON JUSTICE J.B. OJWANG** on 16th September 2009, to file and serve this contempt application on the intended contemnor.

The basis of this application is a consent order entered into between the parties on 29th April 2009 before **HON. JUSTICE SERGON**. On that day Mr. Buti was on record for the Applicant, Mr. Monda for the Respondent whilst Ms. Kipsang was present for the Interested Party. The consent which was read out by Mr. Buti was in the following terms:-

“By consent the ex-parte applicant Mr. Mulongo Advocate to pay to the Interested Party’s advocate Ms. Christine Kipsang a sum of Kshs.950,000/- on or before 28th May 2009. The balance of Kshs.450,000/- to be paid to the same advocate on or before the 26th day of June 2009.”

Both Mr. Monda and Ms. Kipsang confirmed this consent which was thereafter duly adopted by the court.

The Applicants herein now allege that the terms of that consent have been breached. The Contemnor/Respondent did comply with the first part and paid the Kshs.950,000/- as was required. However he has failed to pay the balance of Kshs.450,000/- to date. This, the Applicant submits is causing great difficulty injustice and loss to the Applicant.

I am satisfied that there was a consent duly entered into by all the parties. The said consent was entered into voluntarily and the terms were agreed upon by the parties themselves. Once the consent was adopted by the court on 29th April 2009 it became a valid and enforceable court order. The order was extracted on 6th May 2009 and was served upon the Respondent personally on 11th May 2009 with a penal notice for consequences of failure to comply. The said Peter Mulongo is an Advocate of the High Court and is fully aware of the consequences of his actions. The present application was also duly served on the Contemnor as proved by the affidavit of service sworn and filed by **ALEXANDER KALUVE MUSEMBEI** a licenced Process Server. The Contemnor did not bother to file any reply nor did he come to court to participate in these proceedings. The actions of the Respondent are an outright flouting of court orders and amounts to contempt. No reason is given for his failure to pay this balance as agreed. I am satisfied that this present application is meritorious and it is hereby allowed in terms of prayers (1) (2) and (3) thereof.

Dated and Delivered at Mombasa this 16th day of November 2009.

M. ODERO

JUDGE

Read in open court in the presence of:-

Mrs. Kipsang for Applicant

No appearance by Respondent

M. ODERO

JUDGE

16/11/2009