

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 463 of 2007

DR. JOHN KARUNGAI NYAMU & ANOTHER PLAINTIFFS

VERSUS

MUU & ASSOCIATES ADVOCATESDEFENDANTS

R U L I N G

Application dated 18/7/2008 seeking order of committal to civil jail against John Muu Ndungo *t/a* Muu & Associates Advocates for contempt of court order given hereby by this court on 12.3.2008 or in the alternative his properties be attached and sold to defray damages, the loss and damage resulting from his disobedience of said order.

Application supported by grounds numbered (7) severn. The supporting affidavit attached the order made on 12.3.2008 and issued by Registrar on 10th April 2008. Annexed "JKN5" There is filed affidavit of service and a Notice of Penal Consequences which is stamped by the firm of Muu & Associates on 16/4/2008. The supporting affidavit shows that the sum of Kshs.3,158,678/= was held by Advocate in trust for the plaintiff. The court order demanded that the said sum be deposited in court within next 7 days of the order.

The defendant contemnor has not paid the money to-date. The contemnor admits the order of the court. He admits that he was unable to raise such sum but was hoping to tax his bills. The Taxing Officer quite correctly refused him audience. The defendant contemnor has not paid the money to-date. The contemnor admits the order of court. He admits the amount ordered. He admits that he is unable to raise such a sum. He admits that he received the money for the plaintiffs. However he tries to dispute the money was due and that he had negotiated with plaintiffs to retain some money and that he wished to tax his bill before Taxing Officer before obeying court order and that he has since made application to vary the court order complained of.

He admits non-compliance with order. It is therefore clear that the contempt of the order is proved. The contemnor gives excuses why he failed to obey court order. The circumstances under which the contemnor received the money is that he was acting for plaintiffs in a sale of the plaintiffs property and he received the money for and on behalf of the plaintiffs in trust. The court was of the view that that money received for plaintiffs ought to be deposited in court and it made such order.

The issues raised by the contemnor for his failure to obey court order are evidence that the contemnor did willfully admit the facts but chooses to give excuses for non-compliance. The law is clear. A person who is aware of court order must obey it. He may return for an interpretation of the order but first he must obey the same. In this case the contemnor says after delay he has filed an application to vary order.

The authorities cited to court **Benabo vs. Wilham Jay & Partners Ltd.** on the issue of endorsement of Penal Notice is not relevant as the contemnor does not dispute. Again the provisions of Supreme Court Practice 1997 paragraph 52/1/3 is not also applicable here the contemnor has made application into court to vary the order. The application is on the record he is not denying the amount to be deposited but he wants to be allowed to furnish security bond in similar amount.

It is my view that the contemnor is dilly dallying seeking a way to circumvent obeying court order which act is deliberate and willful breach of court order. After consideration of all material before the

court, I find that the contempt is proved against the contemnor John Muu Ndungu. It is ordered that the contemnor shall be committed to civil jail for a period of (3) three months.

The contemnor shall pay the costs for these contempt proceedings.

It is so ordered.

DATED and **DELIVERED** at Nairobi this 29th day of September 2008.

JOYCE N. KHAMINWA

JUDGE