



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA**

Misc Civ. Applil. 339 of 2008

ATACO FREIGHT SERVICES CO. LTD.....APPLICANT

AND

DENNIS KARIUKI KAMUTU.....1ST RESPONDENT

PIUS KALOKI.....2ND RESPONDENT

RULING

On 19th May 2008, T. Gesora, Resident Magistrate, in SRMCC No. 1085 of 2008 at Mombasa made the following orders against Dennis Kariuki Kamutu and Pius Kaloki who were defendants in the said case which had been instituted by Ataco Freight Services Company Limited:

“ (d) That an order of injunction be and is hereby granted directing the defendants to forthwith return the 1 x 40 foot container No. PCIU 8257530 to the Port of Mombasa.

(e) That the defendants do pay demurrage charge of USD 24 per day from the 22nd March 2008 till the return of the 1 x 40 foot container No. PCIU 8257530 to the Port of Mombasa.

(f) That costs be borne by the defendants.”

The applicant has filed an affidavit of service sworn by one Henry Ohenyo on 23rd May 2008. In the affidavit it is deponed that the said Henry Ohenyo served the above order on 23rd May 2008 upon Dennis Kariuki Kamutu, the 1st respondent herein personally. Notwithstanding the said service, the 1st respondent did not comply with the said order. Hence this application for mainly an order that the 1st applicant be committed to Civil Jail for six (6) months or for such period as the court may deem fit.

The applicant has moved the court under Rule 2 (3) and 3 of the High Court Practice Rules, Section 5 of the Judicature Act, Cap 8, Section 3A of the Civil Procedure Act and Order 52 Rules 2 and 3 of the Supreme Court Practice Rules of England. Leave to institute these proceedings was duly sought and obtained from Serгон J on 5th August 2008. This application was then lodged on 18th August 2008 and served upon the 1st respondent on 27th August 2008. The 1st respondent has filed no response to the application nor did he attend court on 8th October 2008 when this motion came up for hearing. The motion was therefore heard ex-parte.

The affidavit evidence of the applicant has not been controverted. In the premises, the 1st respondent is clearly in contempt of the order given by Gesora, Resident Magistrate in Mombasa SRMCC No. 1085 of

2008 on 19th May 2008. He is accordingly liable to be punished by this court. The necessary jurisdiction is found in Section 5 (1) of the Judicature Act, Cap 8 of the Laws of Kenya which reads as follows:-

“The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England,.....”

Taking into account all the circumstances and there being no mitigating factors, I order that the 1st respondent Dennis Kariuki Kamutu be detained in prison for a period of sixty (60) days.

Order accordingly.

DATED AND DELIVERED AT MOMBASA THIS 29TH DAY OF OCTOBER 2008.

F. AZANGALALA

JUDGE

Read in the presence of:-

Adhoc for the Applicant.

F. AZANGALALA

JUDGE

29TH OCTOBER 2008