



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 19 of 2007**

**PONANGIPALLI VENKATA RAMANA RAO.....1<sup>ST</sup> PLAINTIFF**

**KOLLURI VENKATA SUBBARAYA KAMASASTRY.....2<sup>ND</sup> PLAINTIFF**

***(Joint Receivers and Managers of MRC Nairobi (EPZ Ltd.)***

**EABS BANK LIMITED.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**MRC NAIROBI EPX LIMITED.....1<sup>ST</sup> DEFENDANT**

**MAERSK KENYA LIMITED.....2<sup>ND</sup> DEFENDANT**

**PUNCHIHEWA PRASADA ROBERT.....3<sup>RD</sup> DEFENDANT**

**PUNCHIHEWA MERCY SUSILA.....4<sup>TH</sup> DEFENDANT**

**RULING**

Chamber Summons dated 14.07.08 under certificate of urgency was filed by 2<sup>nd</sup> Defendant for orders set therein.

A preliminary Objection has been raised on the ground that the applicant has no audience of court because he is in contempt of court.

The Counsel (Mr. Oyatta) submitted that by the time the applicant came to court, they were in contempt of Court by not complying with court orders served upon them.

Hon. J. Azangalala ordered return of goods. That order was not honoured. Attachment order was made, application asking release of all goods. The amount which should have been paid was ordered by court, Lady J Lesiit.

It is submitted that a person who has disobeyed court order should not be given any audience by court until he purges the contempt. The dignity of court must be upheld. Applicant should not be heard until he complies with orders by paying the money as ordered.

On the other hand it is said the orders were made when the goods were already out of the country in high seas. The order could not be complied with. I have perused the order issued by Lady J. Lesiit on 4<sup>th</sup> October, 2007 order number 2 was “in default of compliance” the property to be sold to compensate the said applicant in the sum of Kshs.102,910,731.25 and USD 3,034,903.

The order was not obeyed. Instead, the Applicants are trying to justify why the order was not complied with.

It is very clear that orders were issued to satisfy the Plaintiffs claim as ordered by law. It should have been complied with. Failure renders the Applicants to be in contempt of court.

In the circumstances, this court will not encourage the parties to disobey the court orders. They should have disclosed the true position or return to court to seek interpretation of the orders if it was necessary.

This court will not therefore give audience to the Applicant until the contempt is purged by complying with court orders issued on 03.12.2007.

It is so ordered.

**DATED** this 19<sup>th</sup> day of November 2008.

**JOYCE N. KHAMINWA**

**JUDGE**