



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

MISC. CIVIL APPLIC 867 OF 2006

JOHNSTONE M. MUCHUBA.....APPLICANT

VERSUS

**TOWN CLERK MUNICIPAL COUNCIL OF MOMBASA AND/OR CITY COUNCIL OF
MOMBASA.....RESPONDENT**

AND

**IN THE MATTER OF : AN APPLICATION TO APPLY FR ORDERS OF COMMITAL TO
PRISON FOR CONTEMPT OF COURT**

AND

**IN THE MATTER OF: SECTION 5 OF THE JUDICATURE ACT CHAPTER 8 LAWS OF
KENYA**

AND

ORDER 52 RULE 2 OF THE RULES OF SUPREME COURT OF ENGLAND

R U L I N G

In a motion dated 1st September 2006, the applicant herein, Johnstone Muchuba, sought for the town clerk, Municipal Council of Mombasa, the Respondent herein, to be committed to civil jail for willfully disobeying or continuing to disobey court orders issued by this court. The applicant also prayed for a warrant of arrest to be issued to have the Respondent arrested for the purpose of committing him to prison. The motion is supported by the affidavit of Johnstone M. Muchuba sworn on 1st September 2006. When the motion came up for interpartes hearing, this court permitted the applicant to prosecute the same exparte when it became apparent that the Respondent had been served but had not filed any responses nor attended court for the hearing of the motion.

I have considered the oral submissions made by Mr. Adhoch, learned advocate for the applicant. I have also perused the pleadings placed before me. What comes out clearly is that the Respondent was condemned to pay the applicant the decretal sum to the tune of Kshs.244,340 arising out of the judgment of the senior Resident Magistrate's court, sitting at Kilifi vide **Kilifi S.R.M. C.C.C. NO. 36 OF 2003** dated 27th May 2004 and issued on 23rd day of June 2004. The Respondent has failed to satisfy that decree despite having been served. He has also not shown that the council has filed an appeal against the aforesaid judgment. On 26th April 2006 this court directed the Respondent by an order of Mandamus to settle the decree but so far he has failed to do so. I agree with the submissions of Mr. Adhoch, learned advocate for the applicant that the Respondent has continued to disobey orders of this court and those of the court subordinate to this court.

In the end I am satisfied that the motion is well founded. It is allowed as prayed. For the avoidance of doubt, a warrant of arrest is issued against the Respondent which warrant should be executed by the O.C.P.D., Mombasa. Upon his arrest the Respondent should be brought before this court for committal to prison on 28th February 2007.

Dated and delivered at Mombasa this 26th day of February 2007.

J.K. SERGON

J U D G E

In open Court in the presence of Mr. Adhoch for the Applicant. N/A for the Respondent.