



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 502 of 2000

MUNYUI KAHUHA ..... APPELLANT

VERSUS

NG'ANG'A KAHUHA ..... RESPONDENT

RULING

In this application, made under Sections 3A, 42 and 63(e) of the Civil Procedure Act, and O. 21 R. 35 of the Civil Procedure Rules, the Applicant seeks his immediate release from remand prison, on the grounds that he has served his thirty days as per the Court Order, and the “extension” of his prison term by another thirty days was irregular.

The Applicant says that the Honourable Senior Deputy Registrar ordered him to civil jail for thirty days on 1<sup>st</sup> February, 2007. That period expired on 2<sup>nd</sup> March, 2007. Meanwhile, without any formal application, and on a Mention of the case at the instance of the Judgment Creditor, and without giving him the opportunity to be heard, the Honourable Senior Deputy Registrar extended the period to another thirty days. He argues that that is irregular. Secondly, he submits that Section 42 of the Civil Procedure Act gives no discretion to the Court to “extend” civil jail. Once the Order has been made, the Court’s discretion ends.

In my humble view, he is right on the first issue, but wrong on the second.

Any kind of incarceration involves the limitation of a person’s liberty. Although the law permits that person’s liberty may be curtailed in specified situations, the law implores upon us to ensure that “due process” is followed. That is most fundamental. A person cannot simply be condemned or incarcerated without being heard. That is contrary to the principles of natural justice. It was completely irregular to “extend” his imprisonment at the instance of the Respondent, on a “mention” of the case. That could have only been done by way of a formal application, giving the Judgment Debtor the opportunity to be heard.

However, the Applicant’s argument that once the Court had exercised its discretion to sentence him to thirty days civil jail, the Court had no further discretion to extend time, is untenable in law. Section 42(1) of the Civil Procedure Act allow detention in execution of a decree “**for a period not exceeding six months.**” That simply sets the maximum limit of detention to six months, whether it is done by way of **one** sentence, or several sentences, aggregating to a maximum of six months. What is important, however, is that due process must be followed.

**Accordingly, I allow this application, and Order the immediate release of the Applicant Judgment Debtor.**

Dated and delivered at Nairobi this 23<sup>rd</sup> day of March 2007.

ALNASHIR VISRAM

JUDGE