



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**Misc Appli 334 of 2007**

**DRIVE IN DEVELOPERS LTD.....1<sup>ST</sup> RESPONDENT**

**VERSUS**

**WILLIAM K. KIRWA.....2<sup>ND</sup> RESPONDENT**

**IYADI OMULEMBE.....3<sup>RD</sup> RESPONDENT**

**BATH RAGALO.....4<sup>TH</sup> RESPONDENT**

**RULING**

Before me is a Chamber Summons brought under Section 5(1) of the Judicature Act (Cap 8), Order L11 (2) of the Civil Procedure Rules and Section 3A of the Civil procedure Act in which the Applicant seeks leave to apply for an order for committal to prison against William Kirwa, Iyadi Omulembe and Bath Ragalo, the Managing Directors of Agricultural Development Corporation, Agricultural Finance Corporation and Tysons Habenga Ltd respectively for such a period as this Honourable Court may deem fit and just and/or for the sequestration of any such property as would be sufficient to compensate the Plaintiff/Applicant for his loss.

The application is based on the grounds that the Respondent has disobeyed an existing decree and orders of this Honourable Court in this suit issued on 4<sup>th</sup> April 2006; that the Respondents by their action clearly show that they have absolutely no respect at all to this Republic's justice system and this Honourable Court which issued the orders, that it is in the interest of justice fair play and principle of equity that this Honourable Court finds in the Applicant's favour and proceed to grant the leave sought, and that the Respondents' behaviour has and continue to expose this Honourable Court to ridicule and despondence and this Honourable Court must act firmly to assert its authority and protect its dignity.

The application is also supported by an affidavit sworn by Francis Mburu the Managing Director of the Plaintiff who avers that the Respondents have refused to abide with the contents of the said orders dated 4<sup>th</sup> April 2006 which orders were duly served upon them (FMI), that he believes that in the interest of justice and for the purposes of upholding the dignity and honour of this Honourable Court, the orders sought be granted; that there is no other way of enforcing the said orders as the OCPD has refused and/or neglected to enforce the said order.

Although the Managing Director of the Applicant has referred to the alleged orders dated 4<sup>th</sup> April 2006; (MFI) in his affidavit in support of this application' the same was not annexed.

The facts as gathered from the affidavit evidence and the statement of facts as well as verifying affidavit are that Judgment was delivered by Bosire J (as he then was) on 13<sup>th</sup> July 1992 in HCCC 3970 of 1987 and the Decree was issued on 28<sup>th</sup> July 2004. This is about 14 years after the judgment was delivered. The Applicant waited for another 2 years before he filed an application under certificate of urgency in Chambers when he obtained the injunctive orders restraining the Respondents from preventing the applicant from having access to the suit premises.

All that there is on record is the extracted order but the judgment that was delivered on 13<sup>th</sup> July 1992 is not annexed thereto and therefore it is not possible to know what the Applicant sought and what was granted in the said judgment and why the delay of over 13 years for the issuance of the court order and the alleged injunction was issued on 4<sup>th</sup> April 2006 another 2 years from the date the extracted order had issued.

There was inordinate inexcusable delay which has not been explained and I am not persuaded to exercise my discretion in favour of the Applicant.

Accordingly I decline to grant the orders sought and dismiss the Applicant's application with costs.

Dated and delivered at Nairobi this 19<sup>th</sup> day of October 2007.

**J.L.A. OSIEMO**

**JUDGE**