

REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Miscellaneous Application 378 of 2005

TITUS KIMAITA.....APPLICANT

-V E R S U S-

THE TOWN CLERK CITY COUNCIL OF NAIROBI....RESPONDENT/DEFENDANT

R U L I N G

This is a Notice of Motion dated 21st January, 2009 filed by M/s Malonza & Company advocates for the applicant **TITUS KIMATIA**. It was brought under section 5 of the Judicature Act (**Cap. 8**), and pursuant to orders of court issued on 22/7/2008. It seeks for orders that the Town Clerk of the City Council of Nairobi be committed to civil jail for a period of six (6) months for being in contempt of court order made on 22/7/2005.

The application was filed with a supporting affidavit sworn by **JULIUS ORENGE** on 21/1/2009. The contention of the applicant is that the respondent has failed or neglected to comply with the court order for mandamus issued on 22/7/2005 commanding payment of the decretal amount in RMCC No.500 of 1999.

The application is unopposed, though Mr. Abwao for the respondent appeared in court on 13/3/2009, 4/5/2009 and 24/6/2009 and indicated that the respondent was making arrangements to pay. On the 17/7/09, Mr. Abwao stated that he had not received instructions. The matter proceeded to hearing with him (**Mr. Abwao**) stating that the City Council of Nairobi would still look into processing payment.

Considering the circumstances of this case, I am of the view that the Town Clerk City Council of Nairobi has deliberately refused or ignored to obey this court's orders. The effect is to demean or put this court into contempt. Court orders are there to be obeyed, and they must be so obeyed and they must be so obeyed. Of course if an affected party is aggrieved by the Court's orders, he may appeal or challenge the orders. No such challenge has been initiated on this case. No reason has been given for the disobedience of the courts orders.

Consequently, in accordance with the powers conferred on this court by section 5 of the Judicature Act (**Cap. 5 of the Laws of Kenya**), I order as follows-

- 1. The Town Clerk of the City Council of Nairobi shall effect payment of the amount due and payable in RMCC No. 200 of 1999 by 30th October, 2009.**
- 2. In default of the above, he or she will be committed to civil jail forthwith for a period of six (6) months for being in contempt of the court orders made on 22/7/2005.**
- 3. The respondent will pay the applicant's costs of this application.**

3. *It is so ordered.*

Dated and delivered at Nairobi this 15th day of October, 2007.

GEORGE DULU

JUDGE.