

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

CIVIL CASE 1685 OF 1995

JOHN KURIA MWAURA.....PLAINTIFF

VERSUS

NJILUS MOTORS LTD.....DEFENDANT

RULING

The plaintiff sued the defendant NJILUX MOTORS LTD and obtained judgment for Shs.1,091,733/= with costs which in total amounted to Kshs.1,126,847.25. He applied successfully for an order for Peter Murigi Njirwa the Director of the Defendant Company to appear in court to show cause why he should not personally satisfy the debt. He was served but failed to appear. The plaintiff then applied for the warrant of arrest to issue against him. He now applies for orders that the court bailiff of court be assisted by police officer from Kiambu Police Station and be authorized to break into the house of Mr. Peter Murigi Njirwa and arrest him and bring him to this court. He also applies for the costs of this application.

The application is based on the following grounds:

- (a) That on 18th December 2003 Mr. Peter Murigi Njirwa refused totally to come out of his house when the court bailiff assisted by 3 police officers from Thindigua Police Post went to arrest him.
- (b) That the court bailiff together with police officers were unable to arrest Peter Murigi Njirwa since they could not break into his house without a further order requiring them to break into his house and arrest him.
- (c) That it is not possible to arrest Mr. Peter Murigi Njirwa even with the assistance of police officers unless an order authorizing them to break into his house is issued.

This application was made *ex parte* since the said Peter Murigi Njirwa is not accessible. There is no evidence that the said Peter Murigi Njirwa was served with Notice to show cause why he should not personally satisfy the debt.

Secondly on 22nd March 2004 Mr. Kimani appeared before Ochieng J and applied to have the application adjourned indefinitely as he could be in a position to undertake alternative execution process against the defendants property. But on 21st July 2005 the plaintiff again came to court and took the date *ex parte* and it was ordered that the said Peter Murigi Njirwa be served with the hearing notice. There is no evidence on record to show that he was served. This being a civil matter the use of the police is discouraged.

In the case of ***KAMAU MUCUHA VS. THE RIPPLES, CIVIL APPEAL NO.186 OF 1992***, the Court of Appeal stated that the use of the police should never be involved in such matters.

The application is dismissed with no order as to costs.

Dated at Nairobi this 15th day of February 2006.

J.L.A. OSIEMO

JUDGE