



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

**Civil Application 1383 of 2003**

**REPUBLIC..... APPLICANT**

**-V E R S U S-**

**CLERK KIAMBU COUNTY COUNCIL ..... RESPONDENT**

**J U D G E M E N T**

By an Order made on 29-01-2004 the Respondent herein was ordered to satisfy a decree in the sum of Kshs.301,711,19 as per judgement the Ex-Parte Applicant obtained on 30-01-1992, that is over 13 years ago.

Frustrated with lack of payment, the Applicant sought and was granted leave to bring contempt proceedings against the Respondent for contempt of the court Order.

The Respondent in his Affidavit sworn on 9-03-2006 and filed on 10-03-2006, depones that he is not in contempt of the Court Order. He says on Oath, the claim lies with the Kikuyu Town Council where the land is situate, and cannot understand why the Applicant's Advocates despite written advice to that effect from the Respondent has failed and/or refused to take up the issue with the Town Clerk of Kikuyu Town Council.

The Respondent's explains that following the creation of the Kikuyu Town Council, the Ministry of Local Government has yet to complete the division of assets between the Kiambu County Council and the Kikuyu Town Council. While I appreciate this dilemma of the Respondent, the orders are directed against him, and he has made no effort either to set aside or stay execution of those orders since they were granted in January, 30, 1992. That is exactly 13 years and 2 months ago.

It is not just that a litigant should be kept out of the fruits of judgement in his favour. Whereas the Respondent has mitigating factors in his favour arising from the split of assets (if we are to believe the Respondent's bare averments), the prime responsibility for fulfilling the court order lies with the Respondent. The order is against the Respondent's Council. It must obey that order.

For a contemnor to be condemned to prison the applicant must show that the Respondent was served in person and the service included a penal notice. The contempt proceedings are quasi-criminal in nature. The procedure to commit a contemnor to prison must therefore be strictly observed. From the correspondence attached to the Respondent's Replying Affidavit referred to above, this court is satisfied that the Respondent was sufficiently aware of the gravity of the proceedings herein and has merely relied on the technicality of the creation of Kikuyu Town Council, and the alleged division of assets the particulars of which are only known to the Respondent who being aware, has not even had courtesy to attend court.

In the circumstances, this court finds the Respondent in contempt of this Court's Order duly made on 30-01-2004, and thereby liable to be committed to prison for a period not exceeding six (6) months. This order is however suspended for a period of (60) days from the date hereof to enable the Respondent to purge the contempt by securing payment from the Kiambu County Council and claim indemnity from the Kikuyu Town Council. In default, the Respondent shall be committed to prison for a period not exceeding six (6) months after the expiration of the said period.

The Applicant's Counsel is directed to extract the orders herein, and serve them upon the Respondent within the next 7 days, and file a Return of personal service upon the contemnor one Dedan Macharia.

There shall be orders accordingly.

Dated and delivered at Nairobi this 30<sup>th</sup> day of March, 2006.

**ANYARA EMUKULE**

**JUDGE**