

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Misc Civ Appli 216 of 2006

EZEKIEL MWENJA NGURE.....APPLICANT

VERSUS

JOHN NGUNJIRI t/a TANGO AUCTIONEERS.....RESPONDENT

RULING

The applicant herein, Ezekiel Mwenja Ngure has filed an application under **Section 5(1)** of the **Judicature Act** and **Section 3A** of the **Civil Procedure Act** seeking the orders of this court to compel the respondent, John Ngunjiri t/a Tango Auctioneers to release his motor vehicle registration number KSE 144 Isuzu lorry as ordered by the subordinate court in Nakuru CMCC NO.1664 of 1992, Timex Insurance Agency vs Ezekiel Mwenja Ngure. The application is supported by the annexed affidavit of the applicant and the grounds stated on the face of the application. The respondent has filed a replying affidavit opposing the application. Prior to the applicant filing the current application, he sought and was granted leave by this court to institute contempt of court proceedings against the respondent.

At the hearing of the application, I heard rival submissions that were made by Mr. Mwenja, who was acting in person, and Mr Githui learned counsel for the respondent. The issue for determination by this court is whether the applicant has established a case to enable this court grant him the prayers sought in his application. The applicant complains that several orders had been issued by the subordinate court requiring the respondent to release him the vehicle which the respondent had attached pursuant to a warrant of attachment. I have perused the subordinate court's file and note that the dispute between the applicant and the respondent is on the issue of who is to pay the storage charges of the said motor vehicle which according to the respondent remains in his custody for a period of one and half years.

I have carefully read the said proceedings of the subordinate court and noted that the initial order for the release of the said motor vehicle to the applicant was made on the 16th of December, 2004. The applicant paid the auctioneers charges of Ksh.51,000/= . Having considered the submissions made before me, it is clear that the respondent retained the said motor vehicle for a period of one and half years unlawfully after being ordered by the subordinate court to

release the same to the applicant. The applicant has therefore made a case that the respondent disobeyed the orders of the subordinate court in failing to release the said motor vehicle to him as ordered by the said court.

In the circumstances of this case therefore, I hereby hold that the applicant has made out a case that the respondent is in contempt of the orders of the court by his continued retention of the said motor vehicle in spite of the orders that exist on record that the said motor vehicle should be released unconditionally to the applicant. The issue of the storage charges, in my opinion, is a creation of the respondent in a futile attempt to avoid complying with the orders of the subordinate court which has been in existence since the 16th of December, 2004. The respondent was paid his charges by the applicant. There is no valid reason therefore for him continue retaining the said motor vehicle.

I therefore order the respondent to release forthwith motor vehicle registration number KSE 144 to the applicant in compliance with the orders of the subordinate court issued on the 16th of December, 2004

and the 12th of April, 2006. The applicant shall have the costs of this application which I assess at Ksh. 15,000/=. The said amount shall be paid to the applicant by the respondent within seven days of today's date or in default execution to issue.

It is ordered.

DATED at NAKURU this 14th day of July, 2006

L. KIMARU

JUDGE