



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

**Misc Civ Appli 332 of 2006**

**ALEX OWOKO OBONYO.....APPLICANT**

**VERSUS**

**TIMES ENTERPRISES.....RESPONDENT**

**RULING**

By this ex parte Chamber Summons expressed to be brought under Rule 5(1) and (b) of the Judicature Act Cap 8 Laws of Kenya, Order 52 of the Rules of the Supreme Court of England (1965) Section 3A of the Civil Procedure Act Cap 21 Laws of Kenya seeks orders that leave be granted by this Honourable Court for the Applicant to apply for an Order of Committal to be made against P.N. KINYANJUI, Director of Times Enterprises that he be committed to prison for a period as this Honourable Court may deem fit and just in that P.N. KINYANJUI, the Director of Times Enterprises has disobeyed an order made by R.N. KIMINGI (MRS) AG. Senior Principal Magistrate in Nairobi Chief Magistrate's Court Civil Case No. 6715 of 2005.

The application is based on the ground that R.N. KIMINGI (MRS) AG SPM in NAIROBI chief Magistrate's Court Civil Suit No. 6715 of 2005 on 13<sup>th</sup> October 2005 made an order restraining the respondent acting by itself or through its lawful agents from selling, transferring and/or in any other manner dealing with motor vehicle registration No. KAS 284U pending the determination of Milimani Chief Magistrate's Court Civil Case No. 6715 of 2005.

That the court ordered the immediate release of the said motor vehicle Reg. No.KAS 284U to the applicant by the Respondent that the respondent has been served with the order of the court as well as the Penal Notice in default of compliance and it has ignored the same and that it is in the interest of justice and indispensable to the dignity of the court that its just orders be obeyed and contemnors be punished.

The application is also supported by an affidavit sworn by the applicant Alex Owoko Obonyo in which he avers that an order was made by the court restraining the Respondent from selling, transferring or in any other manner dealing with the motor vehicle registration No. KSA 284U pending the determination of this suit.

That on 20<sup>th</sup> November 2005 he got information that the Director of the Respondent Company one Paul Ngotho Kinjanjui was being held at Pangani Police Station and he got accompanied by the process server to the said P.N. Kinyanjui and was served with the court order and the Penal Notice and he acknowledged service, that despite the subsistence of the said suit and the court order issued on 13<sup>th</sup> October 2005 and duly served upon the respondent, the later through M/S Cash Gate Auctioneers did on 31<sup>st</sup> March 2006 unlawfully repossess his said motor vehicle registration No. KSA 284U in total disregard of the said court order; that he verily believes that the said P.N. Kinyanjui the Director of the Defendant is in open and flagrant contempt of this court's orders and that leave be granted to apply to commit the Respondent to prison for such period as the court may deem fit.

The order by the court to release the said motor vehicle by the Respondent to the applicant was made on 13<sup>th</sup> October 2005. There is no evidence as to when the said motor vehicle was repossessed by the Respondent. When the Respondent was allegedly served with the court order issued on 13<sup>th</sup> October 2005 and the Penal Notice, he was in police custody.

There is no evidence as to when if at all he was released from the police custody. From the Applicant's own exhibit A003 the said motor vehicle was attached by the Cash Gate Auctioneers on 3<sup>rd</sup> March 2006 which means that when the court made the order on 12<sup>th</sup> October 2005 the said motor vehicle had not been repossessed or if it was then the same was released and then attached on 3<sup>rd</sup> March 2006.

Whenever the assets intended to be released are in the custody of the auctioneer, the applicant must enjoin the auctioneer since there are conditions to be met before release i.e the auctioneers charges.

For the above stated reason this application is not tenable and the same is disallowed with no order as to costs.

Dated and delivered at Nairobi this 12<sup>th</sup> day of September, 2006.

**J.L.A. OSIEMO**

JUDGE