



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

MISCELLANEOUS CIVIL APPLICATION NO.54 OF 2004

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR ORDERS
OF COMMITTAL TO PRISON FOR CONTEMPT OF COURT**

A N D

**IN THE MATTER OF SECTION 5 OF THE JUDICATURE ACT (CAP.8) LAWS OF
KENYA AND ORDER 52, RULE 2 OF THE SUPREME COURT OF ENGLAND
IN THE MATTER OF: AN APPLICATION BY:-**

1. WAA SHIP GARBAGE COLLECTOR

2. BAKRIZ HOLDINGS LIMITED

3. MWOWAKO SHIPPING AGENCIES

4. ALIYAT INVESTMENTS LIMITED

5. SUBIRA SHIPPING

6. KABURU & SONS SHIP CONT

7. SORICA ENTERPRISES

8. NGALA MARINE

9. SCORPIAN SHIPPING AGENT

10. BINA FREIGHTERS

11. WINYO KENYA LIMITED

12. LE WALS AGENCIES

13. BLUE CAT PORT SERVICES

14. SAJIMULE FREIGHTERS

15. MOHAMED BOAT SERVICE

16. HAMZA BOAT SERVICE

(ALL HEREINAFTER REFERRED TO AS

‘SLUDGE REMOVERS’ FOR EASE OF REFERENCE.....APPLICANTS

V E R S U S

**1. MINISTER FOR TRANSPORT & COMMUNICATIONS, MR. JOHN MICHUKI.....1ST
RESPONDENT**

**2. KENYA PORTS AUTHORITY.....
2ND RESPONDENT**

**3. NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY.....
.....3RD RESPONDENT**

R U L I N G

Application dated 15/2/04 is for orders of committal of the Executive Officer(s) of the 2nd Respondent (KPA) for willfully disobeying and continuing to disobey the court’s order issued in this application on 3/10/2003. The grounds upon which the application is made are set out on the body of the application and supported by the affidavit of Ali Salim Mohamed. The Managing Director of K.P.A. has filed an affidavit in reply paragraph 8 of which he denies the allegations of disobedience of the court order. The issue of the applicants licences to operate as sludge collectors at the Port was in respect of licences issued for the year 2003 (now past) which were terminated and were expiring on 31/12/03. New applications were not made by Applicants for the year 2004.

The Replying Affidavit states that the Managing Director (Chief Executive Officer) of the K.P.A. was never served with the order dated 3/10/03 endorsed with a Penal Notice.

I have perused the material before the court. The issue as to whether the Applicants in the Judicial Review can continue operating at the Port at all is subject to a determination of the application pending. I am informed the same has been argued and it is pending Ruling in the near future. It is subject to application of International Law of Treaties and Conventions of the Sea.

Regarding this application the procedure governing issue of committal orders is well established. The extracted order endorsed with a Penal Notice must be served upon the person who is to obey it. Service is personal in the case of a corporation. Service of process is upon its Chief Executive Officer or Managing Director. In this case personal service is denied and there is no proof of the same.

In the circumstances no order can now be made. The Applicants must await remedy in the Judicial Review determination. I therefore do not find contempt of court order proved. The application is hereby dismissed with costs in the Judicial Review.

Dated at Mombasa this 18th day of June, 2004.

JOYCE KHAMINWA

J U D G E

18/6/04

Khaminwa, J.

Chege – Court Clerk

Mr. Kibaara – 2nd Respondent

Ms. Umaara – for State

Ruling read in their presence.