



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
MISCELLANEOUS APPLICATION NO. 97 OF 2016

PETER NDIRITU WAIREGI.....APPLICANT

- VERSUS -

KENNEDY KABOGO.....1ST RESPONDENT

JANE WANGARI.....2ND RESPONDENT

JAMEDI COMPANY LIMITED.....3RD RESPONDENT

RULING

1. The application before me is for the committal of the 3 respondents to prison, on the grounds that they were in contempt of court.

2. The respondents are;

i) KENNEDY KABOGO;

ii) JANE WANGARI; and

iii) JAMEDI COMPANY LIMITED

3. It is the applicant's case that on 10th February 2015, Hon. T.S. Nchoe ordered the Defendants to immediately release to the applicant the following 2 motor vehicles;

a) Volks Wagen Reg. KBX 046H; and

b) Ford Reg. KBX 195 R.

4. The applicant exhibited the said court order which was issued the Chief Magistrate's Court, Milimani in the case of **PETER NDERITU Vs KENNEDY KABOGO, JANE WANGARI & JAMEDI COMPANY LIMITED, CIVIL CASE No. 1301 of 2014.**

5. When the respondents were served with the application, the 1st respondent explained that he was unable to comply with the orders of the learned Magistrate because he had never had possession of the vehicles which were the subject matter of the orders in issue.

6. The applicant seems to accept the position stated by the 1st defendant, because in the application, the applicant said;

“b) That the 2nd Respondent is still in possession of Motor Vehicle Registration KBX 046H Volks Wagen and Motor Vehicle Registration No. KBX 195R Ford even after being ordered by the Honourable Court to release the same to the Applicant”.

7. Nonetheless, the applicant asked this court to find all the 3 respondents to be in contempt of court.

8. The basis for the 1st respondent's liability is said to be the fact that he is a director of the 3rd respondent, **JAMEDI COMPANY LIMITED**.

9. On the other hand, the 1st defendant categorically denied being a director of **JAMEDI COMPANY LIMITED**.

10. In my considered opinion, the applicant failed to offer evidence to prove his assertion concerning the alleged nexus between the 1st Respondent and the 3rd Respondent.

11. I also find that the applicant failed to tender evidence to prove that the 3rd Respondent was in possession of the vehicles in issue.

12. As already pointed out above, the applicant, himself, had indicated that the vehicles were in the possession of the 2nd respondent.

13. Having come to the conclusion that there was no evidence to show that either the 1st or the 3rd respondent were in possession of the vehicles, I find that they could not have been compelled to hand over the said vehicles to the applicant.

14. Inability to give effect to an order is not the same them as deliberate disobedience of the order.

15. You can only be said to have chosen to deliberately disobey an order of the court if you were in a position to comply with it, but you then made a choice to not comply.

16. Meanwhile, as regards the 2nd respondent, I find that she is in possession of the 2 vehicles in issue.

17. I also find that the order was served upon her, and that the said order contained a Penal Notice.

18. Thirdly, I find that on 13th February 2015, the Officer-In-Charge of the Embakasi Police Station explained to the 2nd respondent the consequences of disobedience of the Order.

19. Notwithstanding the service of the order and the explanation about the consequences for failure to comply, the 2nd respondent deliberately made a choice to defy the order.

20. I have no hesitation at all in finding that the conduct of the 2nd respondent constituted a flagrant disobedience of the court orders which had directed her to release the 2 specified vehicles to the applicant.

21. Such flagrant disobedience of the court orders is an affront to the an orderly society, governed by the Rule of Law.

22. I therefore find that 2nd respondent to be in contempt of the court.

23. I direct the Officer Commanding the Embakasi Police Station to promptly arrest the 2nd respondent

and to thereafter present her to this court, to enable the court hand down the appropriate sentence.

24. This order will be served upon the **OCS**, Embakasi Police Station, by the applicant's advocates.

25. Meanwhile, the costs of the application shall be paid by the 2nd respondent to both the applicant and to the 1st respondent.

DATED, SIGNED and DELIVERED at NAIROBI this 8th day of May 2017.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Nyamweya for the Applicant

No appearance for 1st Respondent

No appearance for 2nd Respondent

No appearance for 3rd Respondent

Collins Odhiambo – Court clerk.