



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CIVIL SUIT NO. 123 OF 2015**

**PETER KOBIA MWERERIA.....PLAINTIFF**

**VERSUS**

**MUHIDIN ABDULKARIM MOHAMED**

**MUNYE ABDO MUNYE.....DEFENDANTS**

**RULING**

1. The Plaintiff has filed the Notice of Motion dated 14.10.2015 and sought orders that:-

**a) This application be certified urgent and service of the same dispensed with in the first instance.**

**b) The Defendants MUHIDIN ABDULKARIM MOHAMED and MUNYE ABDO MUNYE property be attached and the Defendants be committed to Shimo la Tewa Prison for a period of six (6) months for contempt of Court Order dated 28th September 2015.**

**c) Costs of this Application be borne by the Respondents.**

2. That application is expressed to be brought under the provisions of Order 40 Rule 3(1), (3) and 4(1) as well as sections 1A(3) and 63 of the Act. It is grounded on the facts that the defendant/respondents are in flagrant breach of the court orders of the 28/9/2015 as a result of which the dignity of the court is at risk while the plaintiff is alleged to continue losing income courtesy of the alleged contempt.

3. The application was supported by the Supporting Affidavit of the plaintiff in which it is deponed that the defendants having been served with the application dated 11/9/2015 due for hearing on the 28/9/2016, did not attend court as a result of which the court granted the application as prayed by the plaintiff. That the orders of 28/9/2015 were duly extracted and served by one Michael Otieno on the 1/10/2016 upon the defendants at their Business Premises Called, Plaza Hotel, Mwembe Tayari. The order among others things compelled the defendant to open up a shop situate on plot No. 486/18, Mwembe Tayari, Mombasa, and to return the plaintiff's goods and restrained interference with the plaintiffs operation on the premises.

4. The application for contempt was equally served by the same process server on the 16.10.2016 but come the 23.11.2016 there had not been filed any response nor did the Respondents attend court to comment on it. The effect is that the same was deemed unopposed and ordered to be heard *ex parte*.

5. Being an application for contempt the requirement an applicant has to meet are that:

- **The orders with a penal notice have been duly served or brought to the attention of the persons obligated to comply; and**
- **that person obligated has in disobedience failed to comply with the terms of the orders.**

6. There is ample evidence that the Respondents were duly served as deponed in the affidavit of the process server. There is also evidence in the affidavit of the applicant that despite that service the orders are yet to be complied with. Those two facts establish the threshold to punish for contempt and grant the application before court.

Order 40 rule 3(1) & (2) which grant the courts' power to punish for contempt of orders of injunction provide:-

***Consequence of breach [Order 40, rule 3.]***

***(1) In cases of disobedience, or of breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release.***

***(2) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.***

7. My reading of the rule is that there is a discretion on the court to not only order the attachment of the defendants property but also to commit him to civil jail for at most six months. The two modes of punishment may be made in the alternative or cumulatively, and intended to ensure compliance. For this matter the orders sought to be enforced relate to a property being Plot No. 486.18, Mwembe Tayari Mombasa.

8. Having found that the applicant merits being granted the order sought, I make the following orders:

**i) The Respondents MUHDIN ABDULKARIMA MOHAMED AND MUNYE ABDO MUNYE are in contempt of the court order dated 28/9/2015.**

**ii) Let the property of the Respondents including Plot No. 4866/18 Mwembe Tayari be attached for a period of twelve months unless the Respondents shall have complied with the orders of this court.**

**iii) Let the Respondents attend court on the 29.7.2016 and show cause why they should not be committed to civil jail for failure to obey the court orders of 28.09.2015.**

**iv) Costs of the application are orders to be costs payable to the plaintiff/applicant.**

**Dated and delivered at Mombasa this 15th day of July, 2016.**

In the presence of:

No appearance for the plaintiff/applicant.

No appearance for the defendant/respondent.

**P.J.O.OTIENO**

**JUDGE**