



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL DIVISION, MILIMANI

Misc Appli 669 of 2005

MUTAVI MASEKI t/a MASEKI & COMPANY ADVOCATES..... PLAINTIFF

VERSUS

IMRAN NAUSHAD MAWJI..... DEFENDANT

and

DIAMOND TRUST BANK KENYA LIMITED..... AGGRIEVED PARTY

RULING

What is before court is a chamber summons dated 2nd December 2005. It is brought under Order XXXIX Rule 2 (a) and 9 of the Civil Procedure Rules.

The application seeks orders: -

- That an order do issue for attachment of Mr Mutavi Maseki practising as Maseki & Company advocate's attachable property to satisfy an amount

equivalent to the motor vehicle registration number KAS 402S Toyota Corolla Saloon;

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- That in alternative warrants of arrest do issue against Mr Mutavi Maseki

detaining him in prison for a term not exceeding six (6) months from the date of such detaining.

The said Mutavi Maseki was served with this application but failed to attend the hearing thereof.

The application before court is brought by an aggrieved party, namely Diamond Trust Bank of Kenya Ltd.

The brief background to this matter is that the said Mutavi Maseki moved this court for an order

that a motor vehicle registration number KAS 402S be retained by him as a lien over his professional fees due and payable by his client Imran Naushad Mawji.

The court issued interim order on 12th August 2005 stopping the said Mawji or his relatives or agent from repossession that vehicle from Maseki. On 12th October 2005 the court confirmed that order.

The aggrieved party by an application dated 17th October 2005 moved the court for release of that vehicle and in so doing the aggrieved party stated that it was the owner of the subject vehicle leased to the said Mawji on hire purchase basis.

By its order of 28th October 2005 the court ordered Maseki to release the subject vehicle to the aggrieved party within three days of the order.

The aggrieved party's supporting affidavit indicates that Maseki was served with that ruling on 28th October 2005 and with the extracted order on 9th November 2005. It was deponed that the said Maseki had failed to obey the court's order and has therefore not released the motor vehicle. Mutavi Maseki t/a Maseki & Company Advocates v Imran Naushad Mawji & another [2005] eKLR

The evidence presented before court clearly show that Maseki has obstinately refused to obey the order of this court and he leaves the court with no option but to compel the obedience of that order, by the threat of committal to civil jail. Order XXXIX Rule 2A (2) provides what could happen in case of disobedience of an injunction that: -

"In case 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 order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release."

The person here, who is disobeying the injunction granted, hereof is an advocate of the High Court of Kenya, the very person who is expected to respect the dignity and authority of the court. The court has to be ready and fearless at all times to protect itself from behaviour, which would tend to bring disrespect to it or to lower its dignity.

The court finds that Mutavi Maseki disobeyed an injunction granted hereof on 28th October 2005. The court is of the view that it would not be right to order attachment of assets of Maseki & Company advocates, least that such attachment would interfere with matters that the said firm is conducting on behalf of its client.

However the court is of the view that an order for the arrest ought to be granted against the said Mr Mutavi Maseki. The aggrieved party's counsel requested that if warrants were issued that the court would order that the aggrieved party be assisted by police in Nairobi and Mombasa, where the said Maseki can be found. The court is minded to so grant.

The orders of this court are:

(1) That warrants of arrest do hereby issue against MR MUTAVI MASEKI and he be detained in Civil jail for 30 days.

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(2) That Mr MUTAVI MASEKI do forthwith release motor vehicle

registration No. KAS 402 Toyota Corolla Saloon to DIAMOND TRUST BANK KENYA LIMITED.

(3) That police officers in Nairobi and in Mombasa do assist the execution of the court's orders.

(4) That the costs of the application dated 2d December 2005 shall be to the aggrieved party as against MUTAVI MASEKI

Dated and delivered this 20th December 2005.

MARY KASANGO

JUDGE



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