

He states that upon being informed of the position he stopped construction.

His prayer was that he be discharged as he was not in contempt of the court order dated 8th June, 2011.

Counsel for the applicant chose not to testify on the issue of personal service nor was the applicant called upon to testify.

The issues for determination before this court are:-

- i) **Was the 1st Respondent aware of the Court Order**
- ii) **Was of the Personal Service of the court order or Penal Notice effected on the 1st Respondent.**
- iii) **Was the 1st Respondent in disobedience of an order of injunction given by the court on 8th June, 2011**
- iv) **Whether the 1st Respondent is liable to be punished for contempt of the Orders of the Court.**

The 1st Respondent gave evidence on oath that he was unaware of the Court Order of 8th June, 2011.

I shall give the 1st Respondent the benefit of doubt as he stood his ground during cross-examination and maintained that he was unaware of the Court Order and the persons who were served were not his employees and were unknown to him.

The authority annexed by Counsel for the applicant **JUSTUS WANJALA KISIANGANI & 2 others - VS- GTY COUNCIL OF NAIROBI & 3 OTHERS [2008]e KLR** can be distinguished from the case herein. In the above authority the officials of the City Council of Nairobi were all along aware of the ongoing litigation and the court orders. They deliberately disobeyed court orders on the assumption that they would escape liability on technical grounds that they had not been served with the said court order.

Upon evaluation of the case before me I am satisfied that the 1st Respondent was privy to of the case but was not aware of the court order.

Lord Denning in the case of **RE: BRAMBLEVALE LIMITED [1969] 2 ALL E. R 1062** at page 1068 states and I quote:

“a contempt of court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily proved. To use the time honoured phrase, beyond reasonable doubt”

It has been held and argued - Refer to **MUTITKA -VS- BAHARINI FARM (1982 - 88)/KAR** that the standard of proof in contempt proceedings is not as high as envisaged by LORD DENNING but that the standard of proof must be higher than that of on a balance of probabilities.

From the evidence adduced in court by the 1st Respondent, I find that said Respondent was not aware and was never personally served with the court order and Penal Notice and in the absence of evidence to the contrary, the 1st Respondent cannot be committed for contempt of Court.

The application is hereby dismissed.

Costs shall be in the cause.

**DATED AND DELIVERED AT ELDORET
THIS 18TH DAY OF JANUARY, 2012**

**A. MSHILA
JUDGE**