



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**MISC. CIVIL CASE NO. 1 OF 2011**

**IN THE MATTER OF AN APPLICATION BY DOUGLAS MURIUNGI IKUNYUA & DANIEL  
KIROGI MUTURI AGAINST THE**  
**RESPONDENTS FOR LEAVE TO INSTITUTE COMMITTAL PROCEEDINGS**

**DOUGLAS MURIUNGI IKUNYUA ..... 1<sup>ST</sup>**  
**APPLICANT**

**DANIEL KIROGI MUTURI ..... 2<sup>ND</sup>**  
**APPLICANT**

**VERSUS**

**SAMUEL MUGUNA ..... 1<sup>ST</sup>**  
**RESPONDENT**

**JOHN JEMBE ..... 2<sup>ND</sup>**  
**RESPONDENT**

**WASHINGTON KIRIMI ..... 3<sup>RD</sup>**  
**RESPONDENT**

**SAMUEL NJUKI ..... 4<sup>TH</sup>**  
**RESPONDENT**

**JOHN MAROO ..... 5<sup>TH</sup>**  
**RESPONDENT**

**JUSTUS KINOTI ..... 6<sup>TH</sup>**  
**RESPONDENT**

**JUSTUS KINOTI RINGERA ..... 7<sup>TH</sup>**  
**RESPONDENT**

MEME M.K. JOSEPH .....	8 <sup>TH</sup>
RESPONDENT	
JOHNSON HENRY KINYUA .....	9 <sup>TH</sup>
RESPONDENT	
HENRY MUTURI RIUNGU .....	10 <sup>TH</sup>
RESPONDENT	
JOHN NJUE .....	11 <sup>TH</sup>
RESPONDENT	

### RULING

The applicants have moved this court by way of Chamber Summons brought under section 5 of the Judicature Act Cap 8 and section 3 of the Civil Procedure Act. They seek the following order:-

1. ***An order of committal be made against SAMUEL MUGUNA, JOHN JEMBE, WASHINGTON KIRIMI, SAMUEL NJUKI, JOHN MAROO, JUSTUS KINOTI, JUSTUS KINOTI RINGERA, MEME M.K. JOSEPH, JOHNSON HENRY KINYUA, HENRY MUTURI RIUNGU, JOHN NJUE to prison for a period not exceeding six months in that the said persons have disobeyed court orders made on the 19<sup>th</sup> August, 2010, vide Meru CMCC No. 350 of 2010 inter alia:-***
  
1. ***Restraining the defendants/respondents, their agents, servants or anyone else acting on their behest from arranging and or holding national elections of officials of East Africa Pentecostal Churches on the 19<sup>th</sup> August, 2010 as scheduled or at any other date pending the hearing and determination of the application hereof.***

The applicants in their affidavit sworn by Daniel Kirogi Muturi deponed that the respondents, their servants, agents and employees were restrained from holding national elections of the officials of the East African Pentecostal Churches on 19<sup>th</sup> August 2010. That injunction was issued by the Chief Magistrate Court Meru in CMCC No. 350 of 2010. When that order was issued at around 8.30am, the deponent whilst accompanied by his advocate went to the headquarters of East African Pentecostal Churches at Mwendantu within Meru Township. They were there at 9.30 am. When the orders were served upon the respondent, the deponents stated that the respondents had not started the voting exercise. Upon receipt of the order, it is deponed that the 1<sup>st</sup> respondent who was also the presiding general overseer retorted that he did not recognize the order. He stated that he would continue with the election and nothing would stop him. The deponents stated that the respondent was well aware even as he proceeded with elections that the elections had been stopped by the court order. Having conducted the election, the deponents stated that the new leadership had blocked those that seemed to be unfriendly to them from accessing the church. It is on that basis that the applicants seek the orders before court. When the application was before me on 25<sup>th</sup> January 2011, I indicated to the learned counsel for the applicants off the record that she needed to consider proceeding with the present application in the very court where the injunction was given for the orders she sought. When the learned counsel appeared before court on 2<sup>nd</sup> February 2011, counsel stated that the orders of the lower court were issued in August 2010 and therefore the new Civil Procedure Rules did not apply. She therefore stated that the application was rightly before court. It is of important to consider the transitional provisions of the new procedure rules. Those rules are as follows:-

1. *The Civil Procedure Rules as revoked.*
2. *In all proceedings pending whether preparatory or incidental to, or consequential upon any proceedings in court at the time of the coming into force of these rules, the provisions of these rules shall thereafter apply, but without prejudice to the validity of anything previously done:*
  1. *If, and in so far as it is impracticable in any such proceedings to apply the provisions of these rules, the practice and procedure heretofore obtaining shall be followed;*
  2. *In any case of difficult or doubt the Chief Justice may issue practice notes or directions as to the procedure to be adopted. (Underlining mine).*

Under the old Civil Procedure Rules, in particular order XXX1X, rule 2A (2) it was provided that in case of disobedience of injunctive orders, a party could move in the very court where the injunction was given in respect of that disobedience. That rule has been brought in the new Civil Procedure Rules and is of the same terms. I will therefore proceed to reproduce the relevant rule in the new procedure rules.

***“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.”***

It therefore becomes very clear that the application before court is incompetent because the applicants failed to follow the Civil Procedure Rules and to report the disobedience of the respondent to the relevant court, that is, the lower court. It is for that reason that the Chamber Summons dated 5<sup>th</sup> January 2011 is hereby dismissed.

**Dated, signed and delivered at Meru this 10<sup>th</sup> day of February 2011.**

**MARY KASANGO**

**JUDGE**