



**THE REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**Miscellaneous CAivil Application 567 of 2008**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW FOR AN ORDER OF  
MANDAMUS DIRECTED TO THE TOWN CLERK OF THE CITY COUNCIL OF NAIROBI**

**BETH WAMBUI .....APPLICANT  
VERSUS**

**THE TOWN CLERK OF THE CITY COUNCIL OF NAIROBI.....RESPONDENT**

**RULING**

Through a Notice of Motion dated 20<sup>th</sup> June, 2011 the applicant prays that the Town Clerk of the City Council of Nairobi be arrested and detained in prison for a term not exceeding six months. He also prays that the OCS, Central Police Station, Nairobi be ordered to assist and supervise the execution of the arrest and detention of the Town clerk. The application is supported by six grounds on its face:

- (a) The Respondent has adamantly refused to obey the Court Order made on 15<sup>th</sup> November 2009.**
- (b) The power and authority of the Court is being undermined by the Respondent's outright defiance of the Court Order.**
- (c) It is in the interest of justice and fairness that the respondent be punished for his contempt of Court.**
- (d) On 14<sup>th</sup> June 2011 the court granted the applicant leave to cite the respondent for contempt of court for failing to comply with the Order that was issued on 15<sup>th</sup> October 2009.**
- (e) It is therefore imperative that warrants be issued to arrest and detain the respondent in prison for a term not exceeding six months unless the respondent pays the applicant Kshs.218,092/= with interest at the rate of 12% per annum and costs todate as set out in the annexed schedule.**
- (f) The court should also order the Officer Commanding Central Police Station (OCS), Nairobi or officers under him, to assist and supervise the arrest and detention of the respondent because the respondent has security which would therefore make it impossible for the court bailiffs alone to execute the arrest.**

The procedure of instituting and prosecuting a contempt of court application was clearly set out by **Ouko**,

**J in Republic -vs- County Council of Nakuru ex-parte Edward Alera t/a Genesis Reliable Equipment & 2 others [2011] eKLR.** An important requirement is that the substantive application plus a copy of the statement and affidavit in support of the application for granting leave must be served personally on the contemnor unless the court has dispensed with such service.

I am of the view that the need to serve the contemnor in person with the application for leave also extends to service of a hearing notice. After all this is an application that seeks to take away the liberty of the contemnor.

The question that needs to be answered is whether the Town Clerk was personally served with the hearing notice. Peter Andemi swore an affidavit of service on 1<sup>st</sup> November 2011 and stated that when he met the Town Clerk, the Town Clerk directed him to take the papers to the Director of Legal Affairs. He then proceeded and served the papers upon one Miss Mukami. Does this amount to personal service? Was the Town Clerk informed that the papers were to be served on him in person? One cannot say personal service was effected because the Town Clerk was not served. The papers were served on Miss Mukami. There is no evidence that the Town Clerk was aware that the application was for his committal to jail for contempt of court. It would not be just to dismiss the applicant's application because the service was not proper. In the interests of justice I direct that the Applicant be served with the Notice of Motion afresh for hearing at a date to be taken after the delivery of this ruling.

Dated, signed and delivered at Nairobi this 29<sup>th</sup> day of November 2011.

**W. K. KORIR**  
**JUDGE**