



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

Civil Case 1 of 2010

**BISHOP MICHAEL
MBUTHIA.....
...1ST PLAINTIFF
PASTOR JOSEPH
KIMANI
GITAMAKA.....2ND
PLAINTIFF
JORAM MUREITHI
WAMBUGU.....
..3RD PLAINTIFF**

VERSUS

**BISHO ELIJAH
WAMBURI P
.....1ST
DEFENDANT
REV. SIMON
KAMAU.....
.....2ND
DEFENDANT
SAMUEL GITHINJI
MWIKO.....3RD
DEFENDANT
KEPHA MWANGI
RUA.....
.....4TH DEFENDANT**

RULING

On

29th April 2010 I revised the Senior Resident Magistrate's order of 26th April 2010 in Nakuru CMCC No. 176 of 2001 in which he had committed the applicants to civil jail for a period of six months for contempt of court and reserved the reasons for that ruling. I now give the reasons.

The committal order was pursuant to an application made under **Order 39 Rule 2(2) and (3)** of the **Civil Procedure Rules** and **Section 5** of the **Judicature Act**. The former provision empowers the court to commit a party to civil jail for disobedience of an injunction order.

There was no injunction order issued in that case as the trial court had dismissed the plaintiff's case with costs. A subordinate court has jurisdiction to punish for contempt of court under the **Judicature Act**. The Senior Resident Magistrate had therefore no basis whatsoever for issuing the committal order. In the circumstances I set it aside and substitute it with an order dismissing the defendant's application in that case with costs.

DATED and Delivered this 18th day of May, 2010.

D. K. MARAGA

JUDGE.