



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Appeal 637 of 2008

SONY AUDIO CORNER LTD.....1ST APPELLANT

PARKAR RADIO HOUSE.....2ND APPELLANT

JOYLAND CO. LTD.....3RD APPELLANT

WATAALAMU CO. LTD.....4TH APPELLANT

INDO COMPANY LTD.....5TH APPELLANT

VERSUS

JOSEPH MUCHOKI MUGO.....RESPONDENT

R U L I N G

1. Sony Audio corner Ltd (hereinafter referred to as the applicant), seeks leave of this court under Section 5 of the Judicature Act Cap 8 Laws of Kenya, Section 3A of the Civil Procedure Act, Cap 21 of the Laws of Kenya and Order 52 Rule 2(1) of the Supreme Court Rules, for leave to commence contempt proceedings against Joseph Muchoki Mugo, (hereinafter referred to as the respondent), for willful disobedience of this court's orders issued on 11th March, 2009.
2. The application is supported by a verifying affidavit sworn by Muktar Ahmed, a director of the applicant, as well as statements of facts and grounds stated on the body of the application. It is contended that this court issued an order on 11th March, 2009 restraining the respondent from proceeding with further demolition of the suit premises pending the delivery of a ruling on the 27th day of April, 2009. The order is alleged to have been served on the respondent personally. Notwithstanding the order the respondent has purported to demolish the suit premises.
3. The applicant contends that the respondent's actions having been done in total disregard of the court order, are an affront of the dignity of the court, and it is therefore in the interest of justice that the respondent be directed to purge his contempt and be committed to civil jail.
4. The respondent objects to the application contending that it is incompetent, bad in law and an abuse of the court process as no proper evidence has been placed before the court to warrant the granting of leave to commence the requisite contempt proceedings. The respondent maintains that no penal notice accompanied the alleged service of the court order.

5. The respondent further contends that service is alleged to have been effected upon one Stephen Muchoki Mugo who is not the respondent. It is further contended that the affidavit of service was never filed in court and therefore does not form part of the court record. It was maintained that the court must be satisfied that there was an order which was served on the alleged contemnor together with the notice of penal consequences before leave to file contempt proceedings can be granted.

6. I have carefully considered the application before me. This court is being urged to grant leave for contempt proceedings to issue against the respondent. At this stage, all that is required, is for the applicant to establish that there was an order issued by this court on 11th March, 2009, which order has been contravened. The respondent has raised an issue with regard to the service of the order and notice of penal consequences. In effect, that is a defence which can only be canvassed by the respondent during the hearing of the contempt proceedings. For the purposes of the chamber summons dated 15th April, 2009, I am satisfied that there is sufficient justification for issuance of leave to the applicant to bring contempt proceedings against the respondent for willful disobedience of the court order issued on 11th March, 2009. Accordingly, the applicant is at liberty to commence contempt proceedings against the respondent with 21 days from the date hereof.

Dated and delivered this 15th day of June, 2009

H. M. OKWENGU

JUDGE

In the presence of: -

Advocate for the applicant absent

Mwangi for the 1st respondent

Erick – Court clerk