



REPUBLIC OF KENYA

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

**Misc. 154 of 2006**

**DANIEL KINYUA .....**

**PLAINTIFF**

**VERSUS**

**O.C.S. TIGANIA POLICE STATION ..... 1<sup>ST</sup> DEFENDANT**

**HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

The applicant herein had sued the O.C.S. Tigania Police Station and the Attorney General in the Chief Magistrate's Court at Meru seeking a declaration that parcels of land Nos. 2517 and 2823 within Akithi III Adjudication section belongs to the applicant and a further order to the O.C.S. Tigania police station to remove the fence from the said parcels of land.

Judgment in terms of the above prayers were granted in favour of the applicant. The applicant has now moved this court by way of a notice of motion seeking leave to commence contempt proceedings against the respondents and also the committal of the 1<sup>st</sup> respondent (the O.C.S) to imprisonment for a period of six months for failing to comply with the above orders.

The applicant has averred that the 1<sup>st</sup> respondent has refused to vacate the parcels of land in question and also to remove the fence. That, infact, the O.C.S. threatened to shoot the applicant when, in the company of the court bailiff, he went to serve the order on the O.C.S.

Responding from the bar, counsel for the respondent submitted that the application is defective as it seeks to commit an office – O.C.S. Tigania Police station and not an individual. That it has not been demonstrated that there was personal service of the judgment. It was further argued that section 16(2) of the Government Proceedings Act has not been complied with and that the applicant's recourse was in judicial review application.

I have considered these arguments. The application is expressed to be brought under section 5 of the Judicature Act and sections 3 and 3A of the Civil Procedure Act. Section 5 of the Judicature Act donates the power to punish for contempt of court to the Court of Appeal and the High Court. That power is also exercised to uphold the authority and dignity of subordinate courts. I suppose it is pursuant to this provision that this application has been filed in this court.

The provision further states that the power to punish for contempt of court shall be exercised in the manner the High Court of Justice of England exercises its power to punish for contempt. Specifically, Order 52 of the Rules of the Supreme Court provides an elaborate procedure of

commencing and prosecuting contempt of court proceedings.

Of relevance to the instant application is that leave to apply for contempt proceedings must be obtained. The applicant must give notice of the application for leave not later than the preceding day to the crown office (read office of the Attorney General). Once leave is granted, the applicant must apply by way of a motion for the committal of the alleged contemnor.

Unless within 14 days after leave is granted, the motion is entered for hearing, the leave shall lapse.

The notice of motion accompanied by a copy of the statement and affidavit in support of the application for leave must be served personally on the alleged contemnor. It should be apparent from the foregoing that the applicant has not complied with the procedure for commencing contempt proceedings.

Leave must be obtained by way of chamber summons. Once leave is obtained, the main application must be by a motion. See **FAM V. HSS** Civil Appeal No. 129 of 2007.

It is irregular and indeed incompetent to lump together in one application a prayer for leave and that for committal. Apart from the procedural flaws in this application, I am of the view that the application was made prematurely.

Section 21 of the Government Proceedings Act provides that any order against the Government or a Government Department or against an officer of the Government will only be enforced after the court, on application by the person in whose favour the order has been made, has issued to the latter a certificate containing the particulars of the order.

The person in whose favour the order is made must serve the order upon the Attorney General. It is only after the Attorney General has been served with the certificate containing the order and he fails to comply that contempt proceedings can be commenced.

For these reasons, this application fails and is dismissed with costs.

Dated and delivered at Meru this 11<sup>th</sup> day of June 2009.

**W. OUKO**

**JUDGE**