



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

**AT KERICHO**

**Civil Appeal 34 of 2005**

**DAVID CHUMO .....1<sup>ST</sup> APPELLANT**

**KIPKOROS CHELULE ..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

**CATHERINE  
CHUMO.....RESPONDENT**

**RULING**

**I: Background**

1. David Chumo and Jonah Kipkoros Chelule were sentenced to six (6) months imprisonment for contempt of court on the 3<sup>rd</sup> of February, 2009.
2. They had completed four months imprisonment, when the Commissioner of Prisons released them on a Presidential Amnesty of 2009.
3. This court served the Commissioner of Prisons to explain why the said prisoners were released.
4. On 16<sup>th</sup> September, 2009, the Commissioner of Prisons sent his representative, the prisons superintendent based at the Provincial headquarters, Nakuru. His explanation of the release was as follows:

**4.1. That the two defendants fell under petty offences (Category 1)**

**4.2. That the release was due to the Presidential Amnesty.**

5. He produced confidential documents to prove this before court and was questioned by both the court and the advocates on both sides. His explanation was that he was not aware the offence under the **Judicature Act** did not constitute the categories given.

**II: Opinion**

6. On the 27<sup>th</sup> May, 2009 his Excellency the President of Kenya signed a declaration under the **Section 27** of the **Constitution of Kenya** and addressed to all officers in charge of penal institutions and the Commissioner of Prisons, Nairobi; namely, that following a recommendation to his Excellency to

ease the congestion of the prisons, certain prisoners be released.

7. His Excellency outlined the category of prisoners to be released, namely

**a) Prisoners convicted of petty or minor offences who are of good conduct and are committed to serve sentences not exceeding six (6) months.**

**b) First offender Prisoners who are of good conduct with a balance of nine (9) months.**

**c) Ordering prisoners who are of good conduct and with a balance of nine (9) months.**

8. From the information given before Court, all the officers in charge of the penal institution and the Commissioner of Prisons are given/assigned a certain number of persons to be released.

9. The officer in charge of the penal institution at Kericho was given a total number of 52 prisoners, out of this, the two defendants were released under the petty offences on category 1 above.

10. The reasons he is said to have done so was due to the Presidential Amnesty for 1<sup>st</sup> June, 2009 or Madaraka day.

11. According to the reasons, why, defendant 1 and 2 were sentenced to serve a jail term of six months, was clearly indicated as contempt proceedings under the **Judicature Act Cap 8**.

12. The category 1, 2 & 3 refers to the offence against the state, namely, criminal offences or penal code offences and thus the prisons being a penal institution.

13. Contempt proceedings are special category of punishment. It is an offence against the courts. It is a means by which the courts “guard jealously” its “reputation and dignity” to ensure that its orders are obeyed. It matters not whether the orders are wrong or correct (unless it is appealed against, to a higher court).

14. Where a person deliberately contravenes the orders of the court and where on being asked why they have disobeyed the orders of the court (Be it, whether orders are in the subordinate court or the High Court) then if the person apologizes, the court may accept the apology. If the person continues in disobedience, the court may commit such person to imprisonment in the penal institutions for up to six months imprisonment at the costs of the state.

15. If such person apologizes and purges the contempt he/she may be released before the end of the imprisonment sentence is served.

16. It matters not whether the file being dealt with was originally a civil or criminal court case.

17. Contempt proceedings are only dealt with at the High Court. The subordinate courts must apply to the High Court to punish a person of contempt in a civil matter.

18. In this case before me, the defendant 1 and 2 are here for a civil matter. Both had been sentenced under the **Judicature Act Cap 8**. This is **NOT** a petty offence or simple matter where a person has been convicted after trial or on its own plea of guilty for a criminal case.

19. I believe the commissioner of prisons through his penal institution officer in charge, made a grave mistake by including the two defendants 1 and 2 on their list for a Presidential Amnesty.

20. I note even, if the two were to be released under the penal code, there is normally a remission which would have expired on 3<sup>rd</sup> June, 2009. Namely, criminal offence prisoners are given a reprieve of two months to their sentence. It actually came to this court’s attention that the release of most persons under the three category, would be done two to three days when they are actually due to be released anyway,

thus defeating the whole purposes of decongesting the prisons. Perhaps this method of choosing those who qualify for Presidential Amnesty should be relooked into after due study.

### **III: Conclusion**

21. The two defendants are hereby ordered to complete their two months term of imprisonment for contempt of court.

**DATED** this 17<sup>th</sup> day of September, 2009 at **KERICHO**

**M.A. ANG'AWA**

**JUDGE**

**Advocate**

K.L. Kipyegon advocate instructed by the firm of M/S K.L. Kipyegon & Co. advocates for the applicant – present

T.M.O. Nyaingiri instructed by the firm of M/S Nyaingiri & Co. advocates for the two defendants