



**IN THE MATTER OF AN APPLICATION FOR AN ORDER OF CONTEMPT OF COURT**

**AND**

**IN THE MATTER OF SECTION 5 OF THE JUDICATURE ACT,**

**CAP. 8 OF THE LAWS OF KENYA**

**BETWEEN**

**NJOROGE S/O GEORGE GAKIMA**

**(ALSO KNOWN AS WILLIAM NJOROGE KARIUKI) .....APPLICANT**

**AND**

**ESTHER WANJIKU KINYANJUI .....RESPONDENT**

**AND**

**IN THE MATTER OF CIVIL APPEAL NO. 841 OF 2006 BETWEEN THE SAME PARTIES**

**RULING**

The Applicant herein has applied for committal of the Respondent to prison for alleged contempt of the order of the court made on 7<sup>th</sup> December, 2006 (Kariuki, J) in **Nairobi High Court Civil Appeal No 841 of 2006**. It is alleged that the Respondent disobeyed the said order by demolishing the Applicant's dwelling in the suit land pursuant to an order issued by the Principal Magistrate's Court, Kikuyu in **Miscellaneous Civil Application No. 6 of 2006**. It is the Applicant's case that the Respondent was personally served with a copy of the hand-written order of the court on 8<sup>th</sup> December, 2006. It is his further case that the requisite penal notice was also duly served.

The Respondent has pleaded that she was never personally served with the order of 7<sup>th</sup> December, 2006 or penal notice. In any case, she further pleads, she was never in disobedience of the court order because the demolition of the Applicant's dwelling was done by the police to whom the order of the lower court was directed.

I have considered the submissions of the learned counsel for the Applicant and those of the Respondent who was unrepresented. It is now trite law that for an application for committal of anyone to prison for contempt of court to succeed, there must have been **personal** service upon him of the order in question as well as a penal notice. See for instance the case of **LOISE MARGARET WAWERU –Vs- STEPHEN NJUGUNA GITHURI, Court of Appeal at Nairobi, Civil Appeal No. 198 of 1998**

(unreported). The Court of Appeal stated in that case that the validity of proceedings for contempt depends on personal service of the order in question and penal notice.

I accept that the Respondent was duly served with the handwritten copy of the order of 7<sup>th</sup> December, 2006. But the penal notice was not served until 24<sup>th</sup> January, 2007. See the affidavit of service of DANIEL JUMA ALIWA sworn on 9<sup>th</sup> February, 2007 annexed at paragraph 21 of the supporting affidavit. That was long after the alleged contempt on 9<sup>th</sup> December, 2006. So, at the time of the alleged contempt, the Respondent had not been duly served with penal notice. Upon that basis alone this present application cannot succeed.

It is also apparent that the act of 9<sup>th</sup> December, 2006 which the Applicant alleges constitutes contempt on the part of the Respondent of the order of the court of 7<sup>th</sup> December, 2006 was in fact the execution by the police of the order of the lower court for eviction of the Applicant from the suit land. The order of the lower court specifically stated that the eviction should be carried out by the Officer Commanding Kikuyu Police Station. The order of 7<sup>th</sup> December, 2006 merely stated that parties should maintain the *status quo*; it did not specifically stay execution of the order of the lower court. Had it done so, and had that order and a penal notice been duly served upon the Officer Commanding Kikuyu Police Station, that police officer would have been the one in contempt of the order, not the Respondent, as the execution of the order of the lower court was carried out by him and not by the Respondent.

For the above reasons this application must be refused. It is hereby dismissed with costs to the Respondent. It is so ordered.

**DATED AT NAIROBI THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2008**

**H. P. G. WAWERU**

**J U D G E**

**DELIVERED THIS 22<sup>nd</sup> DAY OF FEBRUARY, 2008**