

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Misc Appli 114 of 2007

ANNE WANJIRU KABIRUAPPLICANT

V E R S U S

BEDAN M. CHEGE

(T/a Bedans Auctioneering Services).....RESPONDENT

R U L I N G

This is an application (by chamber summons dated 21st March 2007) for leave to apply for committal of the Respondent, BEDAN M. CHEGE, to prison for alleged contempt of the order of the court in Milimani CMCC No. 9977 of 2004 made on 8th September, 2006.

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 of the order in question as well as a penal notice upon the alleged contemnor. 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)**.

In the present case there is no evidence of personal service upon the Respondent of the lower court's order of 8th September, 2006. No affidavit of such service has been placed before the court. It was also conceded that there was no service of a penal notice. As was stated by the Court of Appeal in the aforesaid case, **the validity of proceedings for contempt depends on personal service of the order in question and penal notice.**

In the present case, without evidence of personal service of the order, and it having been conceded that there was no service of penal notice, any contempt proceedings cannot succeed. It would therefore be futile to grant leave to bring such proceedings. The leave sought is therefore refused. The chamber summons dated 21st March, 2007 is hereby dismissed with costs to the Respondent. It is so ordered.

DATED AT NAIROBI THIS 13TH DAY OF FEBRUARY, 2008

H. P. G. WAWERU

J U D G E

DELIVERED THIS 15TH DAY OF FEBRUARY, 2008