

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 746 of 2006

**IN THE MATTER OF AN APPLICATION FOR COMMITTAL/CONTEMPT OF COURT
PROCEEDINGS AGAINST THE DEFENDANT DIRECTOR AND AGENT**

WACHIRA MURIITHI KIBUCHI

T/A UPDATE BEAUTY SALON.....PLAINTIFF/APPLICANT

VERSUS

VISION INVESTMENT COMPANY LIMITED...DEFENDANT/RESPONDENT

RULING

On 14-7-06 the Applicant obtained a Court order restraining the Respondent by itself, its servants, agents, representatives and/or anybody acting under it from alienating, intimidating and/or interfering with the Plaintiffs quiet enjoyment, use and possession and further from tampering, disconnecting and or interfering with the Applicants use of services such as water and electricity or from evicting the Applicant or locking the premises known as Shop No. GI and 1B of the Ground Floor of the premises known as VISIONS PLACE situated in Buru Buru.

The same day the Defendants Director Mr. Edward Gikunda Munyua was served with the said order together with the application. The said order was allegedly not obeyed. By Notice of Motion dated 9th August 2006 the Applicant brought these contempt proceedings against the Respondents. The application is expressed to be brought under the provisions of Section 5 of the Judicature Act Cap 8 and Order XXXIX of the Civil Procedure Rules. Before the application was heard Mr. Kibe Mungai Counsel for the Respondent raised a Preliminary Objection on the ground that the application for contempt proceedings is incurably defective and oppressive Mr. Kibe Mungai submitted that the contempt proceedings are brought within the suit HCCC No. 746 of 2006 but the application has been brought under the Judicature Act together with Order XXXIX of the Civil Procedure Rules. The two procedures for invoking this Courts jurisdiction for contempt are mutually exclusive and one cannot invoke both at the same time. Contempt proceedings for breach of restraining order should be brought under Order XXXIX of the Civil Procedure Rules and this does not require the leave of the Court to start the process. Invoking both procedures at the same time renders the application defective. The Preliminary Objection is opposed by Miss Njuguna counsel for the Applicant. She submitted that the contempt proceedings application is properly before the Court and that if there is anything wanting in the Notice of Motion the same is curable under the Rules.

It is conceded that these contempt proceedings are brought under both the provisions of the Judicature Act and the Civil Procedure Rules. It should now be clear that for breach of injunction one has to proceed under Order XXXIX Rule 2. One does not require leave to institute proceedings for contempt under this order. All other proceedings for contempt are brought under Section 5 of the Judicature Act and one requires leave to institute such proceedings.

Invoking both the provisions of the Judicature Act as well as the provisions of Order XXXIX of the Civil Procedure Rules at the same time renders the process defective and incompetent and it attracts striking out and in the circumstances there is no necessity for the Court to go into the merits or demerits of the application since there is no competency application before it.

For the reasons stated above the Applicants Notice of Motion dated 9th August 2006 is struck out with

costs. But the Applicant is at liberty to file a competent application.

DATED at Nairobi this 22nd day of February 2007.

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J.L.A. OSIEMO

JUDGE