



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

**Misc Civ Appli 51 of 2007**

**PHEDES CIARUNJI NJERU.....PLAINTIFF**

**VERSUS**

**NAMU KIRUNGIA.....1<sup>ST</sup> DEFENDANT**

**KARIUKI NYAGA KIRUNGIA.....2<sup>ND</sup> DEFENDANT**

**RULING**

The proceedings for contempt are brought under Order 50 and Section 3A of CPC. It is alleged that an interlocutory injunction has been breached. The correct provision for punishment for breach is contained in Order 39 Rule 2 A. The omission of invoking correct orders is fatal to this application. I am referred to HCC No. 28/2001 High Court decision which I agree with. Also authority of Law Society of Kenya Journal at page 57 dealing with Civil contempt has been cited by Respondent. There are issues also as to whether service of order was effected. The affidavit of service is not clear as whether the alleged contemnor -ever saw the order as it was signed for by his brother. All in all committal to civil jail is a serious matter curtailing the liberty of a person. I am not satisfied that the application has been proved.

I therefore dismiss the application with costs to Respondent.

**Dated this 31<sup>st</sup> October, 2007.**

**J. N. KHAMINWA**

**JUDGE**