



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

**Civil Suit 35 of 2005**

**TITUS GATITU NJAU ..... PLAINTIFF**

**VERSUS**

**MUNICIPAL COUNCIL OF ELDORET ..... DEFENDANT**

**R U L I N G**

James Gatitu Njau, who is the applicant herein seeks an order to amend his Notice of Motion to cite J. K. Sitienei, who is the Administrative Officer of Eldoret Municipal Council, and the Town Engineer of Municipal Council for contempt of Court, so that they can be imprisoned for a period of six months or such a period as this Court may deem reasonable period as the Court may deem reasonable.

The application which is based on several grounds but mainly that the Municipal Council of Eldoret (“the Council”) has disobeyed a lawful order and is thus is contemptuous of this Court. It also his ground that Sitienei and the Council proceeded to demolish the applicant’s building on 27/4/2005, despite having been served with the said order on 25/4/2005.

The application is however opposed on the grounds that a Notice of Motion cannot be amended and that the applicant has not given reasons for not having enjoined the said officer prior hereto and that in any event, he never obtained leave to enjoin the said officer.

I have taken the submissions of both able Counsel into account and it is clear from the pleadings that the persons who the applicant wishes to cite for contempt are not parties to the suit. The issue that arises then is how would the Court issue an order against a party who is not a party to the suit? It is very trite that before one is cited for contempt, he should be a party to the suit and even after that, it must be shown satisfactorily that the named person was served with the order, which it is now alleged he has defied and that he has been well aware of the penal consequences.

The general position in law is that Notices of Motion can not be amended. However, the court would allow an amendment where it is shown that there would be no alteration in material particulars such as change of parties. The original application was for injunctive orders to issue against the Council, either acting by itself, its servants, staff and/or agents. There is no doubt that the said Sitienei is an officer or member of staff of the Council, and in my humble opinion, an order and this court would be binding not only on him but also on his colleagues, subject to effective service upon the defendant.

It would be expected that the applicant would have to depone under oath in support of this application that the persons who he wishes to have cited were served with the said order. Save for it being one of the grounds on which this application is based, there is no ample evidence in this application to show that the defendant, Sitienei or for that matter the unnamed Town Engineer were ever served with the order and that they were aware of the penal consequences, for had he shown so, and though Notices of Motion are not generally amended, I would have allowed this application, mainly because the said officers were named in the order in their capacity as servants of the defendant, and they would be liable for contempt of court.

Because of the aforementioned lapses, I am not convinced that the applicant has made out a case for the order which he seeks.

I do therefore strike out the application which is in my view incompetent. Costs to the respondents.

Dated and delivered at Eldoret this 23<sup>rd</sup> day of March 2006.

**JEANNE GACHECHE**

**JUDGE**

Delivered in the presence of:

Mr. Manani for the plaintiff/applicant

Mr. Shivaji for the defendant/respondent