

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

Criminal Application 141 of 1996

*(Appeal from the order of Nanyuki Resident Magistrate Mr. G. C. Mutembei in
Miscellaneous Application Numer 7 of 1996 delivered on 6th June 1996*

G. G. GITHUI.....APPELLANT

VERSUS

PUBLIC HEALTH OFFICER.....RESPONDENT

JUDGMENT

The Appellant G. G. Githui is aggrieved by an order which was made on 6th June 1996 by the then Senior Resident Magistrate Nanyuki ordering the appellant to demolish structures on Plot No. TOL "B" which was alleged to constitute a nuisance and to further issue an order to the Tenants of the premises to vacate the premises within 14 days.

The orders were issued pursuant to an ex-parte chamber summons stated to be brought under section 142 as read with section 115 and 118 of the Public Health Act Cap 242. The court only heard one F. G. Wanjohi a Public Health Officer who claimed to have inspected the premises owned by the appellant and found that they constitute a nuisance.

Section 119 and 120 of the Public Health Act provides the procedure to be followed by the Medical Officer of Health in order to deal with a nuisance. First a notice should be served on the author of the nuisance or if He cannot be found on the occupier or owner of the dwelling or on the on premises on which the nuisance arises to remove the nuisance within a specified time.

Secondly where the person on whom the notice is served fails to comply with the notice, the Medical Officer shall cause a complaint to be registered before a Magistrate.

Thirdly the Magistrate shall issue a summons requiring the person on whom the notice was served to appear before his court.

Fourthly the court if satisfied that the alleged nuisance exist shall make an order requiring the person on whom the notice was served to comply with the notice.

In this case none of the above mandatory requirements provided in section 119 and 120 of the Public Health Act were complied with. No notice was served on the appellant. No formal complaint was lodged before the Magistrate nor did the Magistrate summon the appellant to appear before him. Instead a peculiar procedure was adopted through an ex-parte chamber summons with the result that the appellant was condemned without being given any hearing.

Clearly the trial Magistrate erred in failing to comply with the mandatory legal provisions and also in acting contrary to the rules of natural justice.

Accordingly I allow the appeal and set aside the orders of the trial Magistrate made on 6th June 1996.

Dated, signed and delivered this 30th day of May 2005.

H. M. OKWENGU

JUDGE