



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

**CIVIL SUIT 247 A OF 2004**

**MOSES P. N. NJOROGE JIM WAMBLE, DANIEL HINGA  
MUIRURI**

**THE REGISTERED TRUSTEES NEW TESTAMENT CHURCH OF GOD.....  
.....PLAINTIFF**

**VERSUS**

**REVEREND MUSA NJUGUNA  
T/A CHARISMATA REVIVAL NETWORK THE REGISTERED TRUSTEES.....1ST  
DEFENDANT**

**MUSA NJUGUNA MINISTRIES.....2ND DEFENDANT**

**RULING**

On 15th October, 2004 this court issued specific injunctive orders against the defendants. The orders as extracted were as follows:-

***“1. That the defendants, their servants and/or agents be and are hereby restrained from entering, attending, changing the sign posts, imposing their pastors, trespassing, conducting or otherwise taking over or in any other way interfering with the operations of the plaintiff’s churches situated on L.R. Number Mau Summit (Molo Block 1/181 (Mutirithia), Mau Summit/Molo Block 1/182 (Mutirithia), Nakuru, Eldama Ravine and Njoro, pending the hearing and determination of this suit.***

***2. That the defendants, their servants and or agents be and are hereby restrained from transferring, encumbering or otherwise parting with possession of the land on which the plaintiff’s churches at Nakuru, Molo and Eldama Ravine stand pending the hearing and determination of this suit.***

***3. That the defendants, their servants and or agents be and are hereby restrained from transferring, wasting or otherwise parting with possession of the plaintiffs moveable properties belonging to the Molo, Njoro, Nakuru and Eldama Ravine churches including motor vehicles, tents and public address systems pending the hearing and determination of this suit.”***

The applicant blatantly disobeyed the above orders while he was well aware of the same in that on 17th October 2004 he sent one of his pastors, Stephen Kibiri, to go and preach at the Molo church, which he did. He went with a group of other people to the said church. I wish to point out that Pastor Kibiri and those other people were also in contempt of court and may be liable to be punished for such contempt. The applicant also put his own security group in the church premises to bar the plaintiff’s church

members from accessing the church premises. Those acts of breach were repeated on 24th October, 2004 when the applicant again sent Pastor Kibiri to go and preach in the said church. In October and November, 2004 further acts of contempt were done by the applicant and his people. They even put up a notice saying that the church premises were the property of the applicant and the registered members of Charismata Molo Worship Centre. The applicant personally preached in the church several times in December 2004 and January 2005. On 14th January, 2005, the applicants' servants and/or agents assaulted some people in the church and even the police had to move in and arrest the assailants and prefer criminal charges against them. The above are just but a few of the contemptuous acts of the applicant and his people, servants and/or agents.

Consequently, the applicant was cited for contempt of court and on 9th March, 2005 was sentenced to four months imprisonment. At that time he was out of the country but nonetheless he instructed his advocates, M/S Karanja Mbugua to file an appeal against the said conviction and sentence and the said advocate filed a Notice of Appeal on 23rd March, 2005. No apology was then tendered to court or any effort made to purge the contempt aforesaid. The applicant even filed an application on 31st March, 2005 seeking some injunctive orders against the plaintiff. All this time he was still safely out of the court's jurisdiction and he was acting through Pastor Kibiri and others who were instructing his advocate. I declined to hear that application which was being brought by an unapologetic contemnor who was unwilling to appear before the court and submit to its jurisdiction.

On 17th August, 2005 the applicant appeared with his counsel before Kimaru J. and admitted that he was indeed guilty of contempt of court and offered an apology. He had by then filed an application seeking to strike out the plaintiff's suit which he wanted to be certified as urgent but Kimaru J. had on 21st July, 2005 declined to consider the application until the applicant surrendered himself to the court. His appearance in court on 17th August, 2005 was not therefore out of his volition and heartfelt desire to apologise and purge the contempt but was rather imposed on him by the court. Kimaru J. temporarily stayed the sentence that had been imposed by this court and ordered the applicant to purge all the acts of contempt of the court orders. He further ordered the applicant to execute a bond of Kshs.100,000/- to appear before this court on 19th September, 2005. On that date, Kimaru J. ordered that the file be placed before me on 23rd September, 2005.

When the applicant and his counsel eventually appeared before this court on 4/10/2005 for the purpose of fixing a hearing date of his application dated 21/7/2005, the court ordered that he be committed to prison to start serving the four months sentence as ordered on 9th March, 2005.

On 5th October, 2005 the applicant filed an application urging the court to review its orders of 9th March, 2005 and impose any other punishment that it would deem fit in place of the custodial sentence.

The application was heard on 11th October, 2005 and pending its determination on 14th October, 2005, the sentence that the applicant was serving was suspended. The applicant stated that he was apologetic and that he had purged the contempt and remedied the breaches and undertook not to engage in any future activities that may amount to breach of the orders.

The plaintiff stated in a replying affidavit sworn by Rev. Simon Ngure Ben that the applicant's agents, pastors and/or servants continue to run the operations of the Nakuru Church to date. He further stated that the applicant had caused to be removed from the suit premises musical instruments which included two guitars, a keyboard, an amplifier, two microphones and a drum set, office tables and chairs including church forms, books and bibles, a big television set, motor vehicles and church utensils and the said items had not been returned.

If those averments are correct then the applicant and his servants have committed further acts of contempt of court orders but since the plaintiff did not bring that to the attention of the court when it was hearing the contempt application, I cannot say much about the allegations. But if the depositions turn out to be true, it would be in the applicant's interest to return the said items to the plaintiff as soon as possible rather than risk being cited for contempt again. That includes the running of the Nakuru Church.

Regarding the applicant's plea for review of this court's orders of 9th March, 2005, a court which has made committal orders has discretion to suspend, review, vary or even discharge the same depending on the circumstances of the matter and the conduct of the applicant and if it does so, it is not in any way sitting on appeal of its own judgment or orders as was alleged by the plaintiff. Where a committal order is made for a fixed period but the sentence is suspended subject to the contemnor's compliance with a condition and it is subsequently found that he has not complied with it, the power of the court is not limited to declaring that the committal order is now operative, it retains a discretion to do whatever is just in the circumstances. It was so held in **Re W (B) (An Infant)** [1969] 1 All ER 594 C.A.

In this particular matter, the applicant and his servants and/or agents conducted themselves in a manner that amounted to blatant breach of lawful court orders. They may not have been satisfied with those orders but that notwithstanding, they had an obligation to obey them. The applicant also has a constitutional right of appeal to the Court of Appeal against the orders issued by this court and indeed he filed a notice of appeal. He should have gone to the Court of Appeal and sought stay of execution of this court's orders of 9th March, 2005 but he did not do so, he chose to play it rough. As a senior clergyman he should have demonstrated respect to the rule of law and order but he took the law into his own hands and possibly even misadvised his pastors, servants, agents and perhaps members of his congregation.

However, considering his apology to the court and his statement on oath that he will not breach the court orders in the future, I now review this court's orders issued on 9th March, 2005 and give to the applicant an option of a fine in the sum of Kshs.100,000/- in default of which he will serve the remaining period of the jail term as earlier pronounced.

DATED, SIGNED AND DELIVERED at Nakuru this 14th day of October, 2005.

**D. MUSINGA**

**JUDGE**

**14/10/2005**

Ruling delivered in open court in the presence of Mr. Karanja for the applicant and N/A for the respondent.

**D. MUSINGA**

**JUDGE**

**14/10/2005**