



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**CIVIL CASE 73 OF 2005**

**NTUNTUNI PRODUCTS LTD ..... PLAINTIFF**

**VERSUS**

**JULIUS NDEGWA & ANOTHER ..... DEFENDANTS**

**RULING**

The court records herein shows that the plaint, which was subsequently amended was filed on 24<sup>th</sup> January, 2005. It sought an injunction order against the 1<sup>st</sup> defendant to stop him from trespassing on, the suit premises known as NAIROBI/BLOCK 63/306. A second prayer was directed at the 2<sup>nd</sup> defendant, the Chief Land Registrar, directing him to remove the Restriction imposed on the suit property on 16<sup>th</sup> November, 2004.

Grounded on the plaint was an application for a temporary injunction seeks more or less the same orders.

The matter was tabled in court on 24<sup>th</sup> January 2005. It was certified urgent by Ransley, J who proceeded to make the following orders, **“Certified as urgent. Proceedings to be served on the defendant. The matter to be heard inter partes on 8.2.2005 at 9.00 a.m. The status quo to be maintained pending the interparte hearing of the application”**.

Both parties returned to the court several times as the record shows. The order for **“status quo”** does not seem to have been extended on 31<sup>st</sup> May 2005, but on 20<sup>th</sup> June, 2005, counsel for the applicant did appear before Justice Ransley, with a certificate of urgency, which was accompanied by an affidavit. It referred to the application dated 24<sup>th</sup> January, 2005.

The affidavit of 20<sup>th</sup> June, 2005 referred to the fact that the order for **“status quo”** was vacated when the suit was dismissed, but the same was re-instated on 31<sup>st</sup> May, 2005.

So on 20<sup>th</sup> June, 2005, when the application was lodged ex parte in court, Justice Ransley made the following order,

**“That pending the hearing of the application of 21<sup>st</sup> January, 2005 on the 6<sup>th</sup> July, 2005, the “status quo” be maintained, is that the 1<sup>st</sup> defendant is not at liberty to build on the land...”**.

The order for **“status quo”** was thereafter extended subsequently till 26<sup>th</sup> July, 2005. I have read the notice of preliminary objection filed on 3<sup>rd</sup> August, 2005.

I find that the second point to the effect that “the status quo is that the 1<sup>st</sup> defendant is in occupation of the suit premises,” is not an issue in this hearing, as the order of Ransley, J of 20<sup>th</sup> June, 2005 was very specific. It was about stoppage of construction by the 1<sup>st</sup> defendant.

It is the 3<sup>rd</sup> point about service of the order of 20.6.2005, which I will consider, because I am satisfied from the court record that the order for **“status quo”** was alive, the same having been re-instated on 20.6.2005, and extended on 6<sup>th</sup>, 11<sup>th</sup>, 20<sup>th</sup>, and 26<sup>th</sup> July, 2005 respectively.

I have scrutinized the court file, but have been unable to find evidence of service of the order of 20<sup>th</sup> June, 2005, on the 1<sup>st</sup> defendant, plus notice of penal consequence. What I have found in the file is a letter by the plaintiff’s counsel to the 1<sup>st</sup> defendant’s counsel dated 20<sup>th</sup> July, 2005, stating inter alia

**“As ordered by consent, advise your client not to interfere with the suit property until the 26<sup>th</sup> July, 2005 when the matter is coming up for hearing”.**

With respect to counsel for the plaintiff, I do not consider this as personal service of a court order on the 1<sup>st</sup> defendant to warrant him to be cited for contempt.

On this point of service of a court order, I rely on the Court of Appeal decision of Civil Appeal 198 of 1998, **Loise Margaret Waweru v Stephen Njuguna Githuri**, (unreported), where the Judges said at page 5,

“.... if the order is to refrain from doing an act or requires a positive act to be done, evidence must be led to prove service on the respondent of the order alleged to have been disobeyed along with a penal notice”.

With the specific order of Ransley, J of 20<sup>th</sup> June, 2005, not having been served as required by Law, I am unable to find that the 1<sup>st</sup> defendant/respondent is in contempt of the order of 20<sup>th</sup> June, 2005. In the circumstances, I cannot punish him to prevent him from **“blatantly disobeying a court order”**.

Finally, and in view of my findings above, I proceed to dismiss the plaintiff’s application dated 1<sup>st</sup> August, 2005.

The plaintiff is at liberty to effect service of the aforesaid order properly on the 1<sup>st</sup> defendant, if he so wishes, before he can cite him for contempt.

**Dated at Nairobi this 6<sup>th</sup> day of October, 2005.**

**JOYCE ALUOCH**

**JUDGE**