

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
Revision Case 26 of 2005

Arising from Original Bungoma SPM'S MISC CR. APPL. NO. 74 OF 2005

ASHOK D. KHETIA.....APPLICANT
VS
REPUBLIC.....RESPONDENT

RULING ON REVISION

The Public Health Officer attached to Bungoma Municipality, pursuant to the provisions of section 117 of the Public Health Act applied before the learned resident magistrate at Bungoma for an order to close a building situate in Plot No.BUNGOMA TOWNSHIP/343. On the 11th day of November 2005, the learned Resident Magistrate granted the order after hearing the landlord and the Public Health Officer.

Mr. Rajni Kant Shambulali Khetia trading as Buyako Enterprises being aggrieved by the order has urged this court to interfere the order on revision.

I have called for the file which was before the learned resident magistrate. After a careful perusal of the proceedings taken before the subordinate Court, it is clear that the trial Resident Magistrate granted the order without hearing the tenants in plot no.BUNGOMA TOWNSHIP/343. The learned trial Resident Magistrate therefore breached the rules of natural justice.

In the final analysis the orders issued on 11th November 2005 vide Bungoma C.M.C MISC. APPL. NO. 74 of 2005 are set aside and the miscellaneous application is restored and referred back to the learned Resident Magistrate for retrial and the learned Resident magistrate is directed to hear all the interested parties likely to be affected by the order of closure. If the order has not been implemented let the status quo be maintained.

Dated and delivered this 25th day of November 2005.

J. K. SERGON

JUDGE

In the presence of Mr. Kituyi for the applicant

NA for the respondent.