

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
Misc Application 464 of 2005

MONICA WAITHERA MUNYUA APPLICANT

VERSUS

JOSHUA SORORA 1ST RESPONDENT

JULIUS OLE NTAYIA 2ND RESPONDENT

OLKEJUADO COUNTY COUNCIL 3RD RESPONDENT

RULING

In this application dated 26th July, 2005, and made under Section 5 (1) of the Judicature Act, Cap 8, the Applicant seeks that the first two respondents, and Mr A M Leima (Clerk to the 3rd Respondent) be committed to prison for contempt of the orders of the lower court issued on 7th February, 2005 in PMCC No. 259 of 2004 at Kajiado.

Annexed to the Supporting Affidavit, as part of the bundle of documents marked MWM 11 is an Order of the lower court said to have been breached by the Respondents.

The Respondents, in their replying affidavit, say they have not been served with the Order. Indeed they argue that personal service, in contempt proceedings, is fundamental, and have cited the case of **Mwangi H. C. Wang'ondu vs Nairobi City Commission (C A 95 of 1988, Nairobi)**.

The Applicant, in her supporting affidavit, says that the respondents have been served, and has annexed an "affidavit of service" sworn by John Macharia Muraguri on 27th July, 2005. I have examined this affidavit of service, and find that it is incomplete in that the document served on which the 2nd and 3rd respondents "accepted service by stamping ..." has not been annexed. The affidavit of service has no annexures, and this Court has no way of knowing what was served, and whether it contained the penal notice.

The requirement of personal service of the Court Order, indorsed with the penal notice, is mandatory (See **Wang'ondu case** supra). It is very clear that Mr A M Leima was not served personally.

With respect to the other two respondents, this Court is not satisfied and there is no clear proof that they were served personally.

Secondly, the Order no. 1 alleged to have been breached requires the 3rd respondent – not the other two respondents, "to show the applicant plot no. 966 ...". This Court has not been shown how the first two respondents have breached the court order.

Accordingly, and for reasons cited, this application is dismissed with costs to the respondent.

Dated and delivered at Nairobi this 3rd day of November, 2005.

ALNASHIR VISRAM

JUDGE