



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 682 of 2004**

1. **IBRAHIM KAMAU NJENGA**
2. **WANJIKU KAIRE**
3. **JOSEPHAT GITUGA**
4. **GEORGE MUTURI NGUGI**
5. **PETER MUNENE NDEGWA**
6. **PARTRICIA WANJIKU KIHURA**
7. **KAMITI FARMERS COMPANY LIMITED.....PLAINTIFFS/APPLICANTS**

-VERSUS

1. **MBUGUA KARIUKI**
2. **MICHAEL CHEGE MWANGI**
3. **LUKA KIMANI WORU**
4. **KIMANI WAIHENYA**
5. **WANJIRU KARATU**
6. **ALICE WANJIRU NDICHUDEFENDANTS/RESPONDENTS**

RULING

This is an application by way of Chamber Summons dated and filed on the 7th October 2004 in which the plaintiffs/applicants seek orders including **“that the defendants/respondents be detained in prison for a term not exceeding six months for being in disobedience of the injunctive orders against them granted by Honourable Court on the 25th day of June 2004 and that of 8th July 2004.”** The application is founded on the four grounds set out therein and supported by the affidavit of the fourth plaintiff/applicant, George Muturi Ngugi, made on the 7th October 2004.

The Defendants/Respondents filed their grounds dated the 18th October 2004 in opposition to the application on the 25th October 2004 together with a Notice of Preliminary Objection of even date therewith which said notice was subsequently withdrawn at the hearing of the application.

In submissions, Mr. Njugi for the applicants urged that as the Respondents had been duly served with the two court orders aforesaid and continue to be in contempt thereof, they should be committed to prison. Learned counsel cited various judicial authorities including the Ruling of Hewitt, J. dated the 16th November 2000 in Nairobi (Milimani Commercial Courts) HCCC No. 788 of 1995 (unreported).

Mr. Muiru for the Respondents found himself in some difficulty inasmuch as grounds ii and iii of the said Grounds of opposition filed on the 25th October 2004 related to matters of fact and could only properly be brought to the attention of the court by way of a Replying Affidavit which the Respondents had omitted to file. The learned counsel therefore sought leave to file such affidavit but the application was denied as having been made too late after close of arguments by counsel.

Dealing first with the order of the court granted on the 25th June 2004, the same lapsed, and was not extended, on the 8th July 2004 and the Defendants/Respondents cannot, therefore, be deemed to be in contempt of an order which does not now exist. Having made this finding, it is not necessary for me to consider whether or not the Respondents were duly served therewith though it is clear from the affidavit of service of Bernard Musyoka made on the 6th October 2004 that he did not effect personal service on each of them the Respondents.

Turning to the consent order of the 8th July 2004, there is no evidence whatsoever before me that the order was ever served upon the Respondents or any of them. Paragraph 5 of the said supporting affidavit merely states “that the said order was served upon, and received by the offices of the Respondents’ counsel on record on the 20th July 2004.” For purposes for the application before me, **personal** service **must** be effected on each of them the respondents and not otherwise.

I therefore find and hold that the Respondents have not been duly served with the order of the 8th July 2004. Accordingly, it is ordered that the Chamber Summons application dated the 7th October 2004 be and is hereby dismissed with costs to the Defendants/Respondents.

Dated the delivered at Nairobi this twelfth day of November 2004.

P. Kihara Kariuki

AG. Judge