

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

misc 327 of 2000

AGNES WAIRIMU WAWERU APPLICANT

- VERSUS -

1. MUNICIPAL COUNCIL OF MOMBASA

2. LAND REGISTGRAR – MOMBASA

3. RAMADHA MOHAMED MWAMGUNO RESPONDENT

R U L I N G

The Application is brought under the Provisions of Section 5 of the Judicature Act, Order 52 rules 2 and 3 of the Supreme Court of England, order 50 and 39 rule 2A (2) of the Civil Procedure Rules and Sections 3, 3A and 63 of the Civil Procedure Act. It seeks the following orders at this stage:

“That this Honourable Court do grant leave to the Applicant to apply for orders of Committal to prison for contempt of Court and further and/or other consequential orders as may seem just to the Court against the clerk to the Municipal Council, Mombasa for willfully and fragrantly disobeying the valid Court orders dated 20 th day of September, 2002 and issued on the 30 th September, 2002.

The Application first came up on 28th January, 2003 before Commissioner Khaminwa, as she then was and she ordered for the same to be served upon the Town Clerk. The same was served on 16.4.2003. On record and filed on 13th May, 2003 is an Affidavit of Service sworn Joseph Mutinda a Court Process Server who depones that he had served the Town Clerk with a copy of the Court order on 12.2.03 and the application herein on 16.4.03. Since the said service was effected upon the then Town Clerk Mr. Karani, on the 12th May, 2003, the said process server served the order issued on 30th September, 2002 upon the new Town Clerk

Onesmus Mutua. The alleged contempt however as at the 14.5.03 when the application herein came up for hearing, no attempt had been made to purge the same. Even though Mr. Mburu who is on record for the 1st Respondent(Municipal Council of Mombasa) was aware of the matter and present in court but could not participate at this stage. I would think the reason why the Court in the first instance ordered the service of the application upon the 1st Respondents Town Clerk, was to given them a chance to purge the contempt but they seem not to take such matters seriously. It is upon the said background that I grant the leave sought to apply for orders of Committal to prison for contempt of court. It is my sincere hope that the Town Clerk will wake up and take action before the said proceedings are prosecuted.

Dated and Delivered at Mombasa this 4th day of July, 2003.

P.M. TUTUI

COMMISSIONER OF ASSIZE