



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI**  
**(MILIMANI COMMERCIAL COURTS)**  
**CIVIL CASE NO. 1724 OF 1999**

**JOSEPHINE RAPHAEL MULAA.....PLAINTIFF**

**VS.**

**DIOCESE OF PUMWANI RACEOURSE.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**CATHOLIC MISSIONARY CHURCH.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

In this application the Applicant is asking for leave to file contempt proceedings, alleging that the Respondents have not obeyed the Court Order given by this court on 21.11.99.

It is the Applicants' contention that this Order was served together with a Penal Notice upon the Respondents. The Order restrained the defendant/respondent, its agents, servants, employees from trespassing, interfering in any way with the applicant's parcel of land known as Race Course Plot No. K situated within Nairobi City Council pending the final determination of the suit.

The applicant in her affidavit says that this Order was served on Father William Claver of St. Mary Catholic Church who declined to sign acknowledgement. The Process Server, one Stephen Murira has filed a Return of Service deponing to the service.

The application is opposed on the ground that there was no proper service upon the respondents.

I have considered the evidence contained in the affidavit and the submission by the counsels. The defendant in the suit and the application is the Diocese of Pumwani Race Course Catholic Missionary Church. In the affidavit supporting the service by Stephen Murira in paragraph 6 of his affidavit says that he served Father William Claver who accepted service but refused to sign a copy as acknowledgement.

This is the affidavit dated 2.12.99 and faced with the court on the same day. In the affidavit annexed to the application as annex LKM2 by the same person Stephen Murira sworn on 7.1.2000 he depones that the person he served was Father Paul on behalf of Father William Claver who was not around. Father Paul accepted the service on behalf of William Claver but refused to sign. There is glaring contradiction between paragraph 6 of the affidavit of 2-12-99 and paragraph 6 of the paragraph 6 of the affidavit of 7-1-2000 as to who was served.

One of the affidavits is not telling the truth and only the process server knows which one.

While from the two affidavits the Process Server has failed totally to explain whom he served on 26.11.99 the applicant in her affidavit paragraphs 5 and 6 makes assertions against Father Clavers that he immediately mobilised a team of youth to carry out demolition. She does not say in these paragraphs what was the source of her information. These two paragraphs do not conform to the provisions or Order 18 of the Civil Procedure Rules and are therefore meaningless. For contempt proceedings there must be proper service upon the defendants. The law in fact requires personal service upon the defendants. Besides showing whether the service was on Father Paul or Father William Claver there is clearly no evidence that any of these two were the Trustees of the Body which is sued. Neither is there evidence what this

Body is and whether it has the capacity to be sued.

There clearly was no proper service upon the person sought to be punished it will serve no purpose to grant leave for contempt proceedings. The leave is refused and the application is dismissed with costs to the Respondents.

Delivered and dated at Nairobi this 24th day of January, 2000.

KASANGA MULWA

**JUDGE**