



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL SUIT NO. 440 OF 2014**

HERMANUS PHILLIPUS STEYN ..... PLAINTIFF

VERSUS

RADIO AFRICAN GROUP LIMITED ..... 1<sup>ST</sup> DEFENANT

WILLIAM PIKE .....2<sup>ND</sup> DEFENDANT

SAM KIPLAGAT .....3<sup>RD</sup> DEFENDANT

DAVID OKWEMBAH .....4<sup>TH</sup> DEFENDANT

**RULING**

The plaintiff sued the defendants jointly and severally claiming several reliefs contained in a lengthy plaint filed on 16<sup>th</sup> December, 2014. One of the prayers therein was to restrain the defendants from publishing injurious reports directed to the plaintiff among others.

On 16<sup>th</sup> December, 2014 the court issued interim orders in favour of the plaintiff against the defendants jointly and severally to restrain them as prayed hereinabove. It is the plaintiff's case that the defendants were served with the said order; however, that notwithstanding and in breach of the order given on 16<sup>th</sup> December, 2014 the 1<sup>st</sup> defendant falsely and maliciously printed, published and distributed through one Andrew Mbuva injurious reports concerning the plaintiff in '**The Star**' on 27<sup>th</sup> January, 2015 under the heading "**More security needed in Nguruman eviction**".

It is the plaintiff's case that the report complained of was published maliciously and irresponsibly so as to stir up or cause ethnic hatred by the members of Shompole and Ol Kiramatian towards the plaintiff and Nguruman Limited, a company in which the plaintiff has economic interest and encourage those members to remain in forceful occupation of the plaintiff's property.

Considering the existing order against the defendant it is the plaintiff's case that the publication of that report amounts to contempt of court and intended to impede or prejudice the administration of justice. In an application by way of Notice of Motion dated 17<sup>th</sup> February, 2015 the plaintiff seeks orders that the 1<sup>st</sup> defendant and Andrew Mbuva do attend court on a date to be specified by the court so as to show cause why they should not be imprisoned for publishing further injurious falsehoods against the plaintiff in the cited report. The plaintiff also prays that the 1<sup>st</sup> defendant and Andrew Mbuva be committed to prison for a term not exceeding six months for their several contempt in publishing the said report.

The other reliefs, if the application succeeds, would flow from the decision in preceding prayers. The

application is supported by an affidavit sworn by the plaintiff and several annexures thereto.

There has been a multiplicity of applications herein which have reduced this matter to litigation at interlocutory stage. It is almost one year since the matter was filed, but no steps have been taken by both parties to facilitate the hearing of the main suit, notwithstanding the fact that documents have been filed which would have facilitated the main hearing. However, once seized of any application it is the duty of the court to address the same under the relevant provisions.

In submissions relating to the preliminary objection filed by the plaintiff on 18<sup>th</sup> May, 2015 the defendants addressed the application for contempt lodged by the plaintiff. In particular reference to paragraph 7 of the plaintiff's supporting affidavit sworn on 17<sup>th</sup> February, 2015, the defendants have challenged service of the order upon the defendants so as to hold them in contempt if the court were to be persuaded there was any breach.

This has led the court to peruse the affidavit of service filed by one John Omondi on 19<sup>th</sup> December, 2014. John Omondi is an approved court process server who received the plaint, court order, Notice of Motion and summons to enter appearance from the plaintiff's counsel with instructions to serve the same upon the defendants. The said documents were served upon one Linda Musita who is said to be the legal officer of the 1<sup>st</sup> defendant and authorized to receive and acknowledge all legal documents for the company and staff and large.

Contempt proceedings are of an individual nature in that if one were to be found in contempt of court order the punishment that follows is directed to the individual, and therefore the established practice is that any order directing one to obey a particular instruction should be served personally upon such person. One cannot claim to have delegated authority to accept such service neither can an individual delegate such authority.

In Nairobi **HIGH COURT MISC APPLICATION NO. 470 OF 2010 ABDI KADIR ADAN VS IBREIN BORE CHEDA** the court held,

***“Before one can be found guilty of contempt of court by disobeying a court order it is imperative that one should have been served with the court order alleged to be disobeyed. Such service is a condition precedent to finding the alleged contemnor guilty of contempt of court, and the service should be effected on him or her personally. Suffice to say that in the case of OCHINO AND ANOTHER VS OKOMBO AND OTHERS (1989) KLR 165 the Court of Appeal held that as a general rule, no order of the court requiring a person to do or abstain from doing any act may be enforced by committing him for contempt unless a copy of the order has been served personally on the person required to do or abstain from doing the act in question.”***

When one is cited for contempt the consequence is a reprimand, imprisonment, a fine or attachment of properties owned by such a person. These are punitive measures which require conditions precedent to be fulfilled. One of them is personal service of the order alleged to have been breached.

It will not be appropriate at this stage to address the issue of whether or not there was breach of the order because in the first place I am persuaded by the defendants' position that the alleged service upon Linda Musita, and especially of the order was not proper service in the circumstances of this case. Additionally, Andrew Mbuva is not one of the defendants in this case and his connection to any of the defendants ought to have been established before he is cited for contempt.

In the circumstances therefore, I am unable to grant the orders sought by the plaintiff in the application dated 17<sup>th</sup> February, 2015. The application therefore fails and the costs shall be in the cause.

**Dated and delivered at Nairobi this 1st Day of December 2015.**

**A.MBOGHOLI MSAGHA**

**JUDGE**