



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Misc Cause 675 of 2006**

**IN THE MATTER OF APPLICATION BY ANN W. MWANGI FOR LEAVE TO APPLY FOR  
AN ORDER OF COMMITMENT AND SEQUESTRATION FOR CONTEMPT**

**AND**

**IN THE MATTER OF CONTEMPT TO THE ORDERS OF THE HIGH COURT OF KENYA  
MADE BY THE HON. LADY JUSTICE WENDO ON 23<sup>RD</sup> APRIL 2008 AND ISSUED ON 12<sup>TH</sup>  
JUNE 2008**

**ANN W MWANGI ..... APPLICANT**

**VERSUS**

**TOWN CLERK (being sued on behalf of**

**NAIROBI CITY COUNCIL ..... RESPONDENT**

**JUDGMENT**

By the notice of motion dated 11/2/09, the Applicant, Ann W. Mwangi prays that the court do order that the Town Clerk, City Council of Nairobi, be committed to civil jail for contempt of court orders made by this court on 23/4/08 and that costs of this application be granted to her. The application is supported by grounds found on the face of the said application and the applicant's affidavit dated 11/2/09.

The Applicant got judgment against the City Council of Nairobi on 19.6.06 in CMCC 10541/03. The Respondent failed to pay the decretal sum and the Applicant filed a Judicial Review application to compel the Respondent to pay. The parties recorded a consent judgment on 23/4/08. The Respondent has failed to pay the said sums prompting the Applicant to file the current application to have the Town Clerk compelled to pay. Mr. Osiemo who appeared on behalf of the Respondent opposed the motion for only one reason, that there is no evidence that the Town Clerk has been served with the court order. Mr. Ngala who argued the application on behalf of the Applicant said that there is a letter received by the Town Clerk to confirm service.

In such an application for contempt of court, it is the duty of the Applicant to demonstrate that the contemnor has been served with the court order and has willfully disobeyed the court order. Since there are penal consequences for disobedience the standard of proof that the order is served tends to be higher than in normal civil cases. The Applicant has not filed any Return of Service to demonstrate how and when the Town Clerk was served. Counsel can not rely on a letter allegedly received and stamped by somebody at City Council of Nairobi. It is not known whether the Town Clerk received it personally or some other person received it and it is also not known whether it was drawn to the attention of the Clerk.

The Applicant having failed to satisfy this court that the Town Clerk has been served with the court order, or is aware of the court order, the order sought can not be granted. The notice of motion is therefore dismissed with costs.

Dated and delivered at Nairobi this 1<sup>st</sup> of October 2009.

**R.P.V. WENDOH**

**JUDGE**

**Delivered in the presence of:-**

Mr. Osiemo for Respondent

Muturi – court clerk