

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL APPEAL NO 250 OF 1993

JOHN MWOBOBIAAPPELLANT

VERSUS

CHILDREN OFFICER MERU.....RESPONDENT

(From the original conviction and sentence in P&D No 7 of 1992 of DM II's Court at Meru)

JUDGMENT

On 21st October 1992 the court below ordered that the children do remain in the custody of the mother and the appellant was to provide for all their basic and necessary requirements as to be agreed in between herself and the District Children's officer. The matter was stood over to 4th November 1992 to record the agreement reached between the parties.

No such mention took place on 4th November 1992. Instead of 12th November 1992 the Children's officer appeared before the trial magistrate and applied for an order to attach 30% of the appellant's salary arguing that he had failed to cater for his children. Summons was issued to the appellant to appear before the said court. The trial magistrate did not enquire why the parties had not appeared before her on 4th November 1992 to record their settlement as previously ordered.

When the appellant did appear on 24th September 1993 the prosecutor made an oral application that he should be convicted for contempt of court because he had failed to pay school fees for his children. The appellant told the trial magistrate that he had gone to the children's office as was ordered but nothing was done. The fault, he said, was with that office.

The trial magistrate found the appellant in contempt and fined him Shs 10,000/- in default 6 months imprisonment.

The ruling of the court below dated 21st October, 1992 was not definite. It was not conclusive. It was subject to a further mention on 4th November 1992. When that mention did not materialise and no agreement was recorded, there was no order binding on the appellant. In convicting, him of contempt the trial magistrate assumed there was a valid order of the court dated 21st October 1992, when there was none.

The oral application made by the children's officer, without any affidavit in support denied the appellant an opportunity of challenging the whole proceedings. The procedure adopted was wrong. The court below could only have dealt with the appellant summarily if any acts of contempt had been committed before the court. In any other case an application had to be made supported by an affidavit. The conviction of the appellant was unprocedural and most unsafe and cannot be allowed to stand.

For the above reasons I allow the appeal, quash the conviction and side aside the sentence.

Dated and delivered at Meru this 28th day of April, 1995

C.O Ong'udi

JUDGE