Case Number:	Civil Case 3338 of 1979
Date Delivered:	28 Nov 1979
Case Class:	Civil
Court:	High Court at Nairobi (Milimani Law Courts)
Case Action:	Ruling
Judge:	Alan Robin Winston Hancox
Citation:	Mbugua v Olang & another [1979] eKLR
Advocates:	Mr P Le Pelley for the Defendants/Applicants Mr Sampson & Mr Makecha for the Plaintiff/Respondent
Case Summary:	**Mbugua *v* Olang & another** **High Court, at Nairobi** **November 28, 1979** **Hancox J** **Civil Case No 3338 of 1979** ***Civil Practice and Procedure*** *– parties to suits – striking out a party to a suit – where no cause of action is disclosed against a party – how court will exercise the jurisdiction to strike out a party.* ***Society*** *– church organization – disciplinary matters among the clergy of a church – reluctance of courts to interfere with such matters – courts may nevertheless step in to remedy breaches of natural justice.* ***Ecclesiastical law*** *- discipline of clergy - reluctance of courts to interfere with internal matters of church organisation - courts may step in to remedy breaches of natural justice.*

The plaintiff filed this suit against the Archbishop of Kenya and the Diocesan Synod of Nairobi challenging what he termed as their decision to write a letter to him intended to terminate his services as a clergy of the Church.

The defendants applied for a discharge of an *ex parte* temporary injunction which had been granted in the case to preserved the status quo so that the plaintiff continued to act in his office. The second defendant also applied to be struck out as a party to the suit on the grounds that no cause of action had been shown against it and that the action was an abuse of the process of the court.

The defendants submitted that the Synod was not a proper party to the suit because nowhere in the subject letter had the Archbishop purported to act on behalf of it and neither did it have disciplinary powers over the clergy. Moreover, they further argued, the plaintiff had gone to court prematurely because by the legal and natural construction of the letter, there was no dismissal or termination of his services as alleged.

Held:

1. As with all summary remedies, the Courts are always exceedingly careful in applying the rule because it is a fundamental principle that no person shall be shut out from having his case heard by the court so long as there is a fairly arguable case, even though it might appear to the court that it is unlikely to succeed. Recourse should be had to this summary process in plain and obvious cases.

2. There was nothing in the Constitution of the Diocese and the Canon of the Discipline of the Church to support the plaintiff's contention that the Synod was in any way concerned with or responsible for disciplinary matters affecting the clergy as such matters were the concern of the Bishop and the Bishop's Court. Neither was there anything in the subject letter to suggest that it emanated from the Synod or from the Archbishop in his capacity as chairman.

3. The plaintiff had therefore not shown any reason for impleading the Synod in the suit.

4. The Court would not arrogate to itself powers to decide on matters which are not ordinarily justiciable by the Courts and pronounce upon the conclusiveness or otherwise of decisions taken in respect of disciplinary matters affecting the clergy. The Court could, however, step in to correct clear breaches of natural justice.

5. The plaintiff had shown that the subject letter could at this stage be construed as an attempt to dismiss him. Even if the letter was merely suspending him so that the complaints laid could be investigated, it would be a monstrous injustice to suspend a man from a living he had held for three years, and who had served the Church impeccably before that for some 17 years, on unspecified and undisclosed complaints.

6. Upon consideration of all the material on record, the balance of convenience clearly lay on the side of continuing the temporary injunction. Moreover, it was clear that if the plaintiff ultimately succeeded, any damages he got would be unlikely to be an adequate remedy if he was found unjustly to have lost his position in the Church.

2nd Defendant struck off the suit, application to discharge injunction refused.

Cases

1. *American Cyanamid Co v Ethicon Ltd* [1975] 1 All ER 504; [1975] 2 WLR 316; [1975] AC 396

2. NWL Ltd v Nelson [1979] 1 WLR 1294; [1979] 3 All ER 614

3. Solomon v Presbyterian Church of East Africa & others High Court Civil Case No 2859 of 1977

4. Patel v University of Bradford Senate [1979] 1 WLR 1066; [1979] 2 All ER 582, CA; [1978] 1 WLR 1488, [1978] 3 All ER 841, Ch D

5. McMillan v Free Church of Scotland (1961) 23 Dunl (Court of Session) 1314

6. Forbes v Eden (1867) LR 1 Sc & Div Appeal Case 568

	7. Lee v Showmen's Guild of Great Britain [1952] 1 All ER 1175; [1952] 2 QB 329 *8. Mohamed & another v Haidara* [1972] EA 166 *9. Nsubuga v Mutawe* [1974] EA 491 *10. Elliot v Klinger* [1967] 3 All ER 144 *11. Marengo v Daily Sketch & Sunday Graphic* [1948] 1 All ER 407 *12. Seaward v Paterson* (1897) 1 Ch 549 *13. Acrow (Automation) Ltd v Rex Chainbelt Inc* [1971] 3 All ER 1175; [1971] 1 WLR 1676, CA **Texts** Jacob, IH et al (Eds) *The Annual Practice* London: Sweet & Maxwell **Statutes** 1. Rules of the Supreme Court [UK] order 18 rule 19; order 19 rule 27; order 25 rule 4 2. Civil Procedure Rules (cap 21 Sub Leg) order VI rule 13(1) 3. Trade Disputes Act 1906 [UK] 4. Employment Protection Act 1975 [UK] **Advocates** *Mr P Le Pelley* for the Defendants/Applicants *Mr Sampson & Mr Makecha* for the Plaintiff/Respondent
Court Division:	Civil
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	2nd Defendant struck off the suit, application to discharge injunction refused.

History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

The information contained in the above segment is not part of the judicial opinion delivered by the Court. The metadata has been prepared by Kenya Law as a guide in understanding the subject of the judicial opinion. Kenya Law makes no warranties as to the comprehensiveness or accuracy of the information.

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO 3338 OF 1979

MBUGUA.....PLAINTIFF

VERSUS

FESTO H OLANG & ANOTHER.....DEFENDANT

RULING

November 28, 1979, **Hancox J** delivered the following Ruling.

The two defendants to this action, the Most Rev Festo H Olang, the Archbishop of Kenya, and the Diocesan Synod of Nairobi now apply by chambers summons to discharge the *ex parte* temporary injunction granted on 15th October, 1979, substantially in the terms of the chamber summons then filed. The second defendant also applies that it be struck out as a party to the suit on the grounds that no cause of action has been shown against it and that the action which has been brought is an abuse of the process of the court.

Both applications have by consent been heard together, and it seems to me that I must deal with the second part of the summons first; if that is successful then it is obvious that the temporary injunction could not continue against the second defendant in any event.

Mr Le Pelley, who now appears for both defendants, the present applicants, has argued with force that nowhere in the original letter to the plaintiff dated 12th October (CML) does the Archbishop even purport to act on behalf of the Synod, neither was the Synod as such even one of the addresses shown on the footnote to the second copy of the letter produced and exhibited to the plaintiff's replying affidavit of 2nd November, filed since the *ex parte* injunction was granted. No meeting, Mr Le Pelley said, of the Synod was ever shown to have been threatened, called or held in respect of the plaintiff. Moreover the Archbishop in his capacity as Bishop of Nairobi, has been admitted by the plaintiff in para 2 of his replying affidavit to have full disciplinary powers over the clergy in the Diocese.

The meeting of the Synod which was adjourned on 18th October (and presumably also on 22nd October) had nothing to do with any real or purported exercise of disciplinary jurisdiction over the plaintiff as was alleged in para 14(b) of the plaintiff's second affidavit, but happened simply because as laymen, and as good citizens, they were understandably concerned about any possible breaking of the court order which was by then in existence and which on the face of it applied to the Synod.

The plaint, by para 9, claims that in writing the letter of 12th October "the defendants," thereby meaning both defendants, intended to terminate the plaintiff's services, or alternatively to keep him out of his office for indirect or improper motives. In his replying affidavit the plaintiff has stated that matters involving the Bishop's (meaning the First Defendant's) exercise of his disciplinary powers are reported to and discussed in the Synod, whose members are entitled to express their views thereon either as a body or by its standing Committee. This affidavit was of course filed after that of the First Defendant on

22nd October, in which it is specifically denied that the Synod would be in any way involved in the investigation of the alleged complaints against the plaintiff. Both defences state that disciplinary powers are vested in the Archbishop personally, and that the Synod has no disciplinary powers or functions whatsoever. The plaintiff's first affidavit, which states that he is the senior vicar in the Diocese and a director of the Synod, also claims that if both defendants are not restrained from carrying out their intentions he will suffer inrreparable damage and humiliation, but does not otherwise indicate the manner in which the 2nd defendant is said to be involved in the actions of which the plaintiff complains.

I accordingly invited Mr Sampson, who now leads Mr Makhecha for the plaintiff, to address me on this issue by indicating the nexus which it is the plaintiff's case, exists between himself and the 2nd defendant so far as the actions threatened against him are concerned.

There are two documents so far exhibited in this case which provide, *inter alia*, for the investigation and trial of complaints which may from time to time be made against various members of the clergy, the first being the constitution and laws of the Diocese (Exhibit A to the 1st defendants' affidavit) and the second being the Canon of the Discipline of the Church (Exhibit CM1 to the plaintiff's second affidavit).

Mr Sampson informed me that broadly speaking, the former deals substantively with offences that may be committed and the latter with procedure, though I observe that the constitution makes extensive provision for the exercise of the Bishop's Disciplinary powers (Law 17, which was extensively quoted during the course of the argument), and the stablishment and constitution of the Bishops Court, as well as specifying the kinds of ecclesiastical charges which may be made.

The definition of SYNOD in the *Oxford English Dictionary* includes the following -

"An assembly of the clergy of a particular church, nation, province or diocese, duly convened for discussing and deciding church affairs."

In presbytrian churches, it seems, the Synod is a body or assembly of ministers, delegates and elders constituting the ecclesiastical court next above the presbytery. In Kenya the Synod, is a limited company and a legal entity. Its composition is declared by Law 3. The Bishop of the Diocece is its ex-officio chairman. By Law 6 the Synod is given powers to enact laws and regulations for the management of Diocesan affairs, while the creation of the Standing Committee of the Synod, and its powers and duties are governed by Law 10. Sessions of the Synod and procedure are laid down by Law 7. It appoints representatives to the Electoral College for the election of the Archbishop of Kenya and the Bishop of Nairobi under Law 11. Nowhere in any of those laws is there a reference to disciplinary powers or the investigation of complaints against members of the clergy, which are reserved to the Bishop, and thence in specified instances, to the Bishop's Court, under Parts A & B of Law 17.

In dealing with this aspect of the case Mr Sampson dwelt at length on Order 18 Rule 19 of the (English) Rules of the Supreme Court which combined the form Order 19 Rule 27 and Order 25 Rule 4, and which is now in identical terms to our Order 6 Rule 13(1), under which the second part of Mr Le Pelley's application is made. As with all summary remedies the courts are always exceeding careful before applying the Rule, because it is a fundamental principle that no person shall be shut out from having his case heard by the court so long as there is what is often called fairly arguable case, even though it may appear to the court at the time of the application that it is unlikely to succeed. Recourse should only be had to this summary process in "plain and obvious cases" – Lindley M.R. in *Hubbuck v Wilkinson* [1899] 1 Q.B. at p. 91. In that case the former Order 25 Rule 4 was so applied to an action claiming that the defendants had falsely and maliciously alleged that their zinc paint was superior to that of the plaintiff, the court holding that mere disparagement of another's goods, even if malicious had never amounted to

a cause of action. At the same time Order 6 Rule 13 and its counterparts, are very necessary for the purpose of protecting not only the subject, but the Court itself, from actions which are frivolous or vexatious, obviously unsustainable, or an abuse of its process, and which ought not to be launched in the first place.

Mr Sampson further submitted that none of the criteria set out in the Rule were present in the instant case, and he cited passages from and authorities quoted in the *1967 Annual Practice* in support. He said that only if the action was bound to fail *in limine*, as where a trade union in tort and there was a clear bar to an action under section 4(1) of the Trade Disputes Act 1906, should the extreme sanction be applied. There no question of vexation or oppression here, still less an abuse of the second part of this application, I note that the *Cyanamid* case [1975] 1 All ER 504, which by adopting the lower standard in interlocutory injunction applications, had dealt a fateful blow to the bargaining powers of trade unions, was to some extent emasculated in industrial action cases by the Employment Protection Act, 1975. In such cases the grant or refusal of the injunction very often effectively disposes of the whole suit: see *N.W.L. Ltd v Nelson Times,* 13th November, 1979

Having read the respective affidavits, the Constitution and the Canon of the Discipline of the Church, I am bound to say that I can find nothing whatsoever to support the Plaintiff's contention that the Synod is in any way concerned with or responsible for disciplinary matter affecting the clergy. Neither is there anything in the letter of 12th October giving rise to these proceedings to suggest that it emanated from the Synod or from the Archbishop in his capacity as its Chairman. The Constitution makes it perfectly clear that discipline of clergy is a matter for the Bishop and the Bishop's Court. The only way in which the Synod is brought into matters of discipline is under the Canon of the Discipline of the Church in relation to Bishops. Even then it is only the Standing Committee of the Synod which is involved, their members being required to try and resolve any complain which they may receive as to the conduct of their Diocesan Bishop, and if they cannot do so, to pass it on to the Archbishop. Action against a parish priest, however, is taken in matters of discpline by the Bishop and other specified church officers, whose duty it then is to inform the Archbishop, in whom alone the power to withdraw or suspend a licence to officiate is vested.

It may well be that the Plaintiff, on receiving the letter, thought that the Synod was involved in the decision to suspend him, for he says in his second affidavit that such matters are referred to and discussed in the Synod "or its Standing Committee". That I regard as too vague to support a cause of action against the whole Synod, which, it is conceded, comprises a very large body of people, where the Constitution itself (by Law 7) provides that the function of the Synod is the transaction of business, deliberation and debate, with no reference in that part to the investigation of complaints or of discipline, for which a specific Court, is set up in another part of the same constitution. For these reasons, if the plaintiff is saying that his understanding of the position is that if the Synod is involved in the matter of his proposed suspension or dismissal and the investigation of the supposed complaints against him, then in my view he cannot be right. He has not in my view, shown any tangible grounds for impleading the whole Synod, notwithstanding that it is a legal entity. On this aspect of the case therefore I fully agree with Mr Le Pelley's submissions. I do not think there was any question of scandalous or vexatious behaviour on the part of the Plaintiff or his legal advisers, or that there was any intention to abuse the process of the Court. But I think that what the plaintiff did was to apply his erroneous understanding of the position, and perhaps to read into the letter that the Synod was involved, when that was not the case. I can well understand that, faced with this letter, as it were, out of the blue, the plaintiff was constrained to protect himself against anyone connected with the Church who might be at some stage concerned in dismissing him. But that is not enough for a cause of action to subsist. As Lindley MR, said in *Hubbuck v Wilkinson* (Supra) the mere fact that the plaintiff alleges that he has suffered or will suffer irreparable damage does not improve his cause of action if none exists. Neither does the malice which is imputed to

the Archbishop, even if it converts what does not (as yet at any rate) amount to a cause of action into a valid cause of action against the Synod.

For the foregoing reasons I allow the application in paragraph 2 of the Defendant's summons filed on 22nd October, 1979, and order that the Second Defendant be struck out as a party to the suit. The obvious result of this is that the second Defendant's name in the Plaint and other documents filed be deleted. The question of any consequential amendments to the Plaint can be dealt with separately by counsel, who may be able to agree them.

If not I am prepared to hear argument.

I therefore come to the application in the first part of the summons, to discharge the injunction. As against the second Defendant this must be allowed, because it is no longer a party to the suit. I therefore turn to consider the submissions made in relation to the continuance or otherwise of the temporary injunction against the Archbishop.

The first head of Mr Le Pelley's submission was that there had been no dismissal or termination of the Plaintiff's services as is alleged in paragraphs 7 and 9 of the Plaint to be the natural and legal construction of the letter of 12th October. For the purpose of this Ruling I am treating paragraph 9 as referring to the first Defendant only. Mr Le Pelley said that the Plaintiff had been over astute in carving out the letter a threat of dismissal, that indeed his purpose in bringing the action was to inhibit investigations into matters which were the subject of complaint against him and to burke inquiry into his conduct. That purpose had succeeded so far because of the temporary injunction. However, Mr Le Pelley declined at any stage to state the nature of the complaints which had been made against the Plaintiff, and indeed said he had no idea what they were. So far as am aware they have never been specified, though the Archbishop says both in his defence and in his Affidavit that such complaints exist and will require investigation.

Mr Le Pelley further submitted that the Court should not interfere in the purely domestic affairs of the Church and in so doing take matters of discipline out of its hands. I fully agree that the last thing the Court wishes to do is to arrogate to itself powers to decide on matters which are not ordinarily justiciable by the Courts and pronounce upon the conclusiveness or otherwise of decisions taken in respect of disciplinary matters affecting the clergy. Indeed in *Solomon v Presbyterian Church of East Africa and Others*, H.C.C.C No 2859 of 1977, I held that a decision to excommunicate the Plaintiff was a purely a spiritual and therefore a domestic matter for the Church, in which the Court would not interfere. In that respect the decisions in a long line of what are compendiously called the University cases, of which the most recent is *Patel v University of Brodford.* L.S. Gazette 14th June, 1978, affirmed by the Court of Appeal (Sol: Jo: 29th June, 1979, p 436 are highly relevant. But there is in my view all the difference in the world between intermeddling in domestic decisions and stepping in to correct clear breaches of natural justice (which Mr Sampson says is the situation in this case) if these are shown to exist. Moreover in many of the 19th Century Church cases the Courts showed that they would and could give relief to clergymen if they could establish that what had happened amounted to a breach of contract clearly entitling the Plaintiff to redress. For instance in *McMillan v Free Church of Sctotland* (1961) 23 Dunl (Court of Sesstion) 1314:

"a minister was suspended because he was said to have drunk a little too much, and in his consequent exuberance, to have kissed a married woman. The Court of Sessions does not appear to have pronounced upon the conclusiveness of the decisions of domestic tribunals, but on the basis that the deprivation of the office was *ultra vires* and therefore a breach of contract."

Again in *Forbes v Eden* (1867) L.R. 1 Sc & Div., Appeal Case 568

“the Plaintiff was ordained in the Scotch Episcopal Church in 1848 and was a conscientious and zealous clergyman of the Church. He had been ordained under the Code of Canons adopted by the Synod in 1838. In 1863 the Church issued a new Code of Canons, adopting *inter alia* the book of Common Prayer of the Church of England and, as it then was, Ireland. With this the Plaintiff disagreed on morally unimpeachable grounds. He therefore instituted a suit in the Scottish court for a declaration, that he was entitled to celebrate Divine worship and administer sacraments and rites in accordance with the Canons of 1838, and further for reimbursement of Pounds 120 to the curate and Pounds 200 as a solatium for his wounded feelings. He claimed that it was not competent to members of the religious association, which he had voluntarily joined, to change its fundamental character, as they did by the enactment of the 1863 Canons, in violation of the contract which he had made with that association.”

While it is true that the House of Lords held that the Canons of 1838 could not properly be regarded as a contract between the Scotch Episcopal Church and the Plaintiff, Lord Colonsay, in agreeing with the Lord Chancellor and Lord Craworth, said that while a court of law would not interfere with the rules of a voluntary association they would do so “to protect some civil right or interest which is infringed by their operation”. He continued (at p 588):

“In the present case no objection is taken to the jurisdiction of the Court, for the plain reason that the Appellant has, by the shape of his action, coupled with his allegations against the proceedings of the Synod, as affecting his civil rights and interests, entitled himself to have the judgment of the Court on those civil rights and interests.”

And Lord Cranworth intimated that while there was no jurisdiction in the Court of Session to reduce the rules of a voluntary association, this was “except so far as might be necessary for some collateral purpose”, one instance of which is a breach of contract.

I therefore do not agree with respect, with the second head of Mr Le Pelley’s submission that if the other matters of which the Plaintiff complains are established up to the standard which is necessary at this stage (and again I recognize that Mr Le Pelley said that the standard applied when the matter was *ex parte* was not the correct one on the Kenya authorities) that that would in this case amount to a domestic issue not justiciable by this court.

I return to the first aspect of Mr Le Pelley’s submissions: namely that there was no dismissal, actual or constructive, of the Plaintiff, the requirement that to vacate his parish being merely to facilitate the investigation of the complaints. Mr Sampson in his submissions against discharging the injunction subjected the letter to minute examination. What else, he said, can the requirement that the Plaintiff take leave of absence, which to ran the matter home, is enclosed between inverted commas in the second paragraph, coupled with an order to leave the vicarage, give up the car and hand over all the keys to the Revn Mbelesia more or less at once, mean other than that the Plaintiff was being dismissed, or at least that there was a serious risk of it" In the eyes of an ordinary and reasonable man a letter coming out of the blue like that would induce a feeling of alarm and apprehension that his living and position were in considerable jeopardy, because the Archbishop was the most powerful man in the Church who alone had the power to withdraw the Plaintiff’s licence to officiate.

With these submissions I agree at least to this extent, that in my view the letter is capable of the construction for which the Plaintiff and his legal advisers contend in the Plaint and subsequent Affidavits. Not only is it not stated in the letter that there had been complaints, but when the archbishop’s Affidavit and defence are filed there is only the bare mention of them, and no attempt made at any time to apprise

the Plaintiff of what they were. Even if, at its lowest, the letter was merely suspending the Plaintiff so that the complaints laid could be investigated, would it not be a monstrous injustice to suspend a man from a living he has held for the past 3 years, and who had served the Church, (it is not suggested at this stage otherwise than impeccably) before that for some 17 years on unspecified and undisclosed complaints" In my view it is not enough to flourish the phrase “domestic matters” in the face of the Court and say that it is debarred from correcting the position, temporarily at least, until the merits can be decided. At this juncture I would make brief reference to the case of *Lee v Showmen’s Guild* [1952] 1 All E.R., the judgment of Denning LJ, in which at page 1181/2 Mr Sampson quoted *in extenso*. I say a brief reference I am not at all sure that, while the Church and the various disciplinary bodies within it may well come under the general heading of “domestic tribunals”, it does not go beyond a domestic decision of that tribunal if someone can show *prima facie* that he is, has been, or is liable to be deprived of a fundamental right. As in the case of *Forbes v Eden* (supra) the Plaintiff has by the shape of his action, entitled himself to have the judgement of the court on that right. As Denning LJ said in *Lee v Shomen’s* Guild (supra)

“They” (the Courts) “ will see that the man has notice of the charge and reasonable opportunity of being heard”.

True what was said in relation to expulsion from the Guild, and it is said here that the Plaintiff has as it were jumped the gun, since there has been no dismissal. I do not agree with that. It may be that his dismissal was not stated in terms, but even if I were to apply the highest test laid down by Spry JA in *Mohamed v Haidara*, of a *prima facie* case with a probability of success, see [1972] E.A. at p. 168B (affirmed in *Nsubuga v Mutawe* [1974] E.A. at p. 491, and Mr. Le Pelley says, a subsequent case which laid down that the *Cyanamid* case was not to be followed) I should still take the view that the Plaintiff had shown at this stage *prima facie* that the letter bears that construction. And having considered all the material on the record in my view the balance of convenience clearly lies on the side of continuing the temporary injunction. Moreover, there is no doubt in my mind that if the Plaintiff ultimately succeeds any damages he gets would be unlikely to be an adequate remedy, if he is found unjustly to have lost his position in the Church.

I have carefully considered all Mr Le Pelley’s submissions, in particular that the Plaintiff has continually reiterated that he has been dismissed in the hope that someone will eventually believe it, but I do not accept that this is the case, on the present evidence before the Court. I consider that the Plaintiff has established up to the standard necessary at this stage of the case that the letter can reasonably be construed as a serious attempt to relieve him of his duties and suspend his licence to officiate, preparatory to dismissing him. As I have indicated, if this is finally established to be so, it cannot be done without specifying the charges and giving the Plaintiff an opportunity of being heard; in other words acting not only in accordance with the principles of natural justice but with the Church’s Constitution.

For these reasons I refuse the Defendant’s application to discharge the injunction as against the Archbishop and I continue it until the final determination of the matters in dispute in the action between the remaining parties.

There is one other possible aspect of the case to which I need to refer. The action against the Synod has been dismissed and the temporary injunction goes only against the Archbishop. It is only he who is now a Defendant to the suit. It may well be that it is only he who can take any action, in the terms of the Constitution, which would infringe the injunction. But that is not to say that others who might be tempted to assist in taking action of similar kind are not subject to the jurisdiction of the Court. Thus, if anyone should aid or abet the breaking of the injunction that person or persons would be in contempt of court, *Elliott v Klinger* [1967] 3 All E.R at p. 144, not because he or they will have directly broken it, but

because they will have so conducted themselves as to obstruct the course of justice in assiting a breach and will have tried to set the process of the Court at naught. See *Marengo v Daily Sketch* [1948] 1 All E.R. at p. 407, and *Seaward v Paterson* (1897) 1 Ch. at p. 549/50, followed recently in *Acrow v Rex Chainbelt* [1971] 3 All E.R. at p. 1180. I felt it right to refer to these matters in view of the possibility (although I have no direct notice thereof) that the respective position of the parties may have changed since the matter was heard before me.

November 28, 1979

HANCOX J

creative commons While the design, structure and metadata of the Case Search database are licensed by Kenya Law under a Creative Commons Attribution-ShareAlike 4.0 International, the texts of the judicial opinions contained in it are in the public domain and are free from any copyright restrictions. Read our Privacy Policy | Disclaimer