



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA**

Criminal Revision 3 of 2008

(Arising from RMCCR.C. NO. M.3959 of 2007 of the Resident Magistrate's Court at Mombasa.)

AMARNATH GUPTAAPPLICANT

VERSUS

MUNICIPAL COUNCIL OF MOMBASA.....RESPONDENT

R U L I N G ON REVISION

On 25th February 2008, the Deputy Registrar of this court was prompted to place before this court for perusal pursuant to Section 363(2) of the Criminal Procedure Code the proceedings in respect of **Mombasa R.M.'s Criminal Case No. 3959 of 2007, Municipal Council of Mombasa =vs= Haji Abu Mohamed and Nurein Said Ahmed.** Pursuant to Section 362 of the Criminal Procedure Code I perused the aforesaid record. It is apparent from the aforesaid proceedings that Haji Abu Mohamed and Nurein Said Ahmed were served with a notice issued pursuant to Section 119 of the Public Health Act. It would appear they did not comply with the terms of that notice. They were then arraigned before the District Magistrate sitting at the Municipal Court to face a charge of failing to comply with the notice contrary to section 115 as read with Section 120(2) and (3) of the same Act. They were accused of the following:

- (i) Failing to provide sanitary facilities for three shops**
- (ii) Failing to overhaul all the worn out waste water drain pipes.**
- (iii) Failing to replace the manhole covers.**

They pleaded guilty to the charge but prayed for more time to impress upon the tenants to vacate the premises before the terms of the notice can be completed with. On the 23rd day of January 2008, the learned magistrate issued an order for the immediate closure of the premises standing on Plot No. 381 and further directed the tenants to vacate the same to enable the land lord i.e. Haji Abu Mohamed and Nurein Said Ahmed comply with the terms of the notice. In other words the tenants were ordered to vacate the premises without being heard. One of the tenants namely Amarnath Gupta has now applied to this court to revise the order on the ground that he was not heard.

It is the submission of Mr. Mutubia learned advocate for the landlords that the tenants were given sufficient notice hence heard. It is the learned advocate's view that it was not mandatory for the tenants to be heard under Sections 118 and 119 of the Public Health Act.

I have considered the oral submissions of learned counsel. I have carefully perused and taken into account the proceedings place before this court. It is clear that the tenants operating in the premises standing on Plot No. 381 section XVIII/MI were not heard before the learned District Magistrate made the orders directing them to vacate the premises. The learned Trial Magistrate only heard the Public Health Officer and the Landlord. There was no reason why the tenants were not heard. The fact that notice was served upon them did not substitute a requirement to hear them. Since the order of closure would affect the tenants it was imperative upon the trial magistrate to hear them. The fact that there was no express provision in the Public Health Act enjoining the trial court to hear the tenants did not mean that the court had no jurisdiction to hear the tenants. For this reason alone the order must be revised.

In the end the order for closure is set aside and the matter is referred back to the Municipal Court with a directive that all the tenants should be summoned to show cause why such an order should not be made.

Dated and delivered at Mombasa this 28th day of March 2008.

J.K. SERGON

J U D G E

In open court in the presence of Mr. Kibara h/b Mutubia for the Accused.

N/A for Respondent

N/A for Applicant