



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. 490 OF 2016**

**RUNDA WATER LIMITED.....1<sup>ST</sup> APPELLANT**

**RUNDA ASSOCIATION.....2<sup>ND</sup> APPELLANT**

**-VERSUS-**

**TIMOTHY JOHN NICKLIN.....1<sup>ST</sup> RESPONDENT**

**ANNE CHRISTINE NICKLIN.....2<sup>ND</sup> RESPONDENT**

**RULING**

1) The subject matter of this ruling is the Notice of Preliminary Objection dated 18th February 2020 whereof the respondents seek to bar the appellants from being heard in the appeal until they purge the contempt. When the preliminary objection came up for hearing it became apparent that the appellants had not filed any response. The appellants also failed to attend court for the hearing of the preliminary objection therefore the same proceeded for hearing exparte.

2) I have considered the grounds stated on the Notice of Preliminary Objection and the facts deponed in the affidavit of Timothy John Nicklin filed in support of the Preliminary Objection.

3) I have also considered the respondents' written submissions plus the authorities cited. The background of this dispute is that on 30th June 2016, Hon. Isaac Orange, learned Senior Resident magistrate delivered his judgment vide Nairobi C.M.C.C no. 3062 of 2014 whereof the appellants were restrained from blocking or barricading access or construction material to the property known as LR. No. 7785/35.

4) The learned Senior Resident Magistrate also issued a mandatory order of injunction to compel the appellants to remove the barriers erected on the public road and further awarded the respondents costs of the suit.

5) The appellant being aggrieved filed this appeal seeking to challenge the aforesaid orders. They filed an application to stay those orders but Lady Justice Njuguna in her ruling delivered on 29.11.2017 declined to grant the orders.

6) Being aggrieved further, the appellants approached the Court of Appeal for similar orders. The Court of Appeal heard the application and proceeded to dismiss the appellants' application vide its ruling delivered on 11th May 2018.

7) It is pointed out by the respondents that the appellants so far have not complied with the court orders and have offered no tangible reasons as to why they have not done so.

8) It is the submission of the respondents that the appellants are yet to abide by the trial court's orders even after they were convicted for contempt. They argued that the appellants are undeserving of any audience by this

court having openly defied to submit to its authority in the first instance.

9) It was pointed out that the appellants have contemptuously and flagrantly breached and disobeyed the trial court's orders and that the breach is continuing.

10) It is stated that the appellants have continued to erect a barrier on a public road despite being directed to remove the same thus curtailing the respondents right of way, freedom of movement and full access to public road.

11) The respondents have further stated that the appellants having already been convicted for contempt have still failed and or refused to purge the contempt.

12) The appellants have not controverted the respondents averments made via the supporting affidavit of Timothy John Nicklin.

13) In this case it is not disputed that the trial court issued both prohibitive and mandatory orders of injunction against the appellants and those orders are still in force.

14) It is also not in dispute that both this court and the Court of Appeal declined to issue orders of stay. It is now more than four years since the orders were issued and the appellants have failed to comply with. I think this is a deserving case where the contemnor should not be given audience until or unless they first purge the contempt by complying with the court orders which appear to be clear and unambiguous.

15) Consequently, I uphold the Preliminary Objection and adjourn the hearing of this appeal for 3 months and or until the appellants purge their contempt.

16) If after the lapse of three (3) months the appellants will not have complied with the court orders, the appeal shall be listed for dismissal. Costs of the Notice of Preliminary Objection to abide the outcome of this appeal.

17) This appeal to be mentioned before this court on 29.3.2021 for further orders and directions on the appeal.

**Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 16<sup>th</sup> day of December, 2020.**

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**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Appellants

..... for the Respondents