



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC MISC NO.75 OF 2018

IN THE MATTER OF: APPLICATION TO CITE THE RESPONDENTS FOR CONTEMPT OF COURT

-AND-

IN THE MATTER OF: JUDICATURE ACT CAP 8 LAWS OF KENYA

-AND-

IN THE MATTER OF: BUSINESS PREMISES RENT TRIBUNAL CASE

NUMBER 965 OF 2017

WARUKU PRIMARY AND NURSERY SCHOOL.....APPLICANT

-VERSUS-

BENARD MUYA.....1ST RESPONDENT

EZRA KIBE.....2ND RESPONDENT

RULING

1. This is a ruling in respect of a Notice of Motion dated 18th April 2018 which seeks to cite the respondent for contempt of an order dated 26th January 2018 issued by the Business Premises Rent Tribunal (BPRT) No.965 of 2017. The applicant is a Public Primary and Nursery School which mainly caters for the educational needs of dis-advantaged children from Kangemi and its environs in Nairobi.
2. The applicant had entered into a lease agreement with one Ezra Kibe for lease of the land on which the school is situated. Out of nowhere, the respondent herein started causing trouble to the school by uprooting the school fence, uprooting the school signboard and putting up temporary structures within the school compound.
3. The applicant went and filed a reference before the BPRT being BPRT No.965 of 2017 in which it named the respondent as 1st respondent and Ezra Kibe as 2nd respondent. The applicant contemporaneously filed an application at the BPRT seeking injunctive orders restraining the 1st respondent from interfering with the operations of the school. The chairperson of the BPRT issued an order dated 26/1/2018 which restrained the respondent from interfering with the operations of the school.
4. The order from the BPRT was duly served upon the respondent on 14/2/2018. The same order was served upon the respondent by the OCS Muthangari police station. Despite the order being served upon the respondent, the respondent went ahead to put up an illegal iron sheet structure within the school compound. This defiance was despite the respondent being asked by the Assistant County Commissioner, Kangemi Division to cease construction. The applicant therefore argues that the respondent's action is a recipe for chaos and is bound to disrupt school activities.
5. The respondent opposed the applicants application through a replying affidavit sworn on 7/11/2018 in which he contends that the applicant's application is an abuse of the process of court; that he fully complied with the court order upon being served; that the structures being complained of were put up by his maternal grandmother in October 2017 long before the order was issued ex-parte on 18/1/2018 which order had been overtaken by events and that no signboard was uprooted as he is a law abiding citizen. The respondent further contends that he is putting up in the structure put up by his grandmother as he cannot afford alternative accommodation.

6. The respondent's position was supported by an affidavit filed by his maternal grandmother who deponed that she had two children namely Ezra Kibe and Mary Wanjiru (now deceased). The deceased was mother to the respondent and that she had divided land which she was entitled to by virtue of inheritance from her father's estate into two portions which she gave to Ezra Kibe and her daughter Mary Wanjiru (deceased). Her son Ezra Kibe leased his portion to the applicant which lease overlapped to the respondent's land by half; that in October 2017 she put up structures for her grandson and her two granddaughters.

7. In a further affidavit, the applicant states that the respondent in furtherance of his disobedience of the court orders went and pulled down 12 pit latrines belonging to the school. The respondent was charged in Kibera vide criminal case No.2 of 2019 but was released on cash bail of Kshs.100,000/=.

8. I have carefully considered the application by the applicant and the opposition to the same by the respondent. I have also considered the submissions by the parties herein. The only issue for determination is whether the applicant has proved that there was contempt of a court order.

9. In a case of alleged contempt of a court order the applicant is expected to prove that there was a valid court order which required a contemnor to do or not to do certain acts; that the order was served upon the contemnor or that the contemnor had knowledge of the order; that the contemnor wilfully disobeyed the order.

10. In the instant case, there is evidence that there was a valid court order given by the BPRT. There is also evidence that the order was served upon the contemnor and the contemnor does not deny service. There is also evidence that the contemnor wilfully disobeyed the order by putting up an iron sheet house within the school compound. The contemnor's claim that the house was put up by his grandmother before the order was given cannot be believed. There are letters from Muthangari police station which confirm that the chairperson of BPRT was made aware of the flagrant contempt by the police.

11. The contemnor is trying to mislead the court that the house was put up before the order was given. The order given by BPRT was explicit on what the contemnor was not expected to do. There is further evidence that the contemnor pulled down pit latrines belonging to the school and that he has been charged in court for that.

12. In **Teaches Service Commission Vs Kenya National Union of Teachers & two others** Justice Linet Ndolo stated thus:-

“ The reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt of court proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed. A court order is not a mere suggestion or an opinion or a point of view it is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option”.

13. In **Hadinson Vs Hadikinson (1952) P 285 at 288** Romer J stated thus:-

“ It is plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void”.

The contemnor has demonstrated that he is a person who does not have any regard for court orders. A court order must be obeyed by all even when one believes it to be of no consequence to him. In the instant case, the contemnor appears to have been under a mistaken belief that as there is apparently a dispute between him and his uncle Ezra Kibe as to the extent of the latter's parcel, he can act with impunity. The police had asked the contemnor to desist from his actions but this could not deter the contemnor. I find that the contemnor is guilty of contempt of the court order given on 26/1/2018. The contemnor shall be dealt with in accordance with the law upon being given opportunity to mitigate.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 24th day of October, 2019.

E.O.OBAGA

JUDGE

In the presence of:-

Mr Osewe for the Respondent and

Mr Sichangi for Mr Musyoki for Applicant

Court Clerk : Hilda

E.O.OBAGA

JUDGE