



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
MILIMANI LAW COURTS
JUDICIAL REVIEW DIVISION

JR. NO. 187 OF 2014

EDWARD MUTINDA NDETEI & OTHERS.....APPLICANTS

VERSUS

BII KENNETH NGENY.....CONTEMNOR/RESPONDENT

RULING

1. On 2nd July, 2015, upon hearing the Notice of Motion dated 24th October, 2014, which sought an order that the Director of Lands and Urban Planning, Government of Makeni County be found to be in contempt of the order of this Court and to have the said contemnor committed to prison for a term not exceeding six (6) months, this Court indeed found that the said Respondent without any reasonable excuse failed to comply with the orders of the Court and held that he was in contempt of Court. The Court then proceeded to direct that the said contemnor personally appears before this Court to explain why appropriate sanctions ought not to be taken against him.

2. The proceedings were however stalled for a considerable period of time as it was disclosed that the said contemnor had been involved in a road accident. When the proceedings substantially resumed, the contemnor, **Mr. Bii Kenneth Ngeny** was present. According to his learned counsel, **Mr. Nyamu**, the contemnor craved the Court's leniency and relied on Article 50(2) of the Constitution which mandates that a person convicted ought to be given the least severe punishment. To leaned counsel, appropriate sanctions would include a warning and this being a quasi-criminal proceedings the *mens rea* ought to be considered in deciding the appropriate sanctions to be imposed.

3. It was submitted that in this case the order was made against the contemnor as a holder of an office and that there was no malice aforethought attributed to him to warrant severe sanctions. Learned Counsel submitted that the demolition which constituted the contempt was never carried out to its completion hence the Court order was not completely ignored. It was however disclosed that the contemnor was remorseful and apologetic for the actions which were undertaken before he became aware of the existence of the Court order hence the same were not deliberate but as a result of breakdown of communication.

4. The Court was urged to consider a reprimand or a fine as opposed to a custodial sentence considering that the contemnor was a victim of a road accident.

5. On behalf of the ex parte applicants, it was submitted by **Mr. Okongo** that the respondent took the Court order casually hence cannot rely on Article 50(2) of the Constitution. It was submitted that the contempt was continuing and the stringent sentence was sought against the contemnor.

6. I have considered the submissions made by counsel. In my earlier ruling alluded to hereinabove, the Court was clear in its mind that contempt of court is an affront to judicial authority and therefore is not a remedy chosen by a party but is invoked to uphold the dignity of the court. The Court found that the County Government of Makueni conducted itself in a most despicable manner not expected in this constitutional era. I reiterate what I said in the earlier ruling that those who disobey Court orders risk being declared by the Court to have breached Article 10 of the Constitution which prescribes national values and principles of governance with the attendant consequences among other appropriate sanctions.

7. In deciding what sanction to mete this Court must therefore balance the fact that the contemnor herein was acting in his official capacity against the need to maintain the rule of law and to ensure that the authority and the dignity of our Courts are upheld at all times and to stamp the Court's authority and uphold the values and principles of governance enshrined in Article 10 of the Constitution.

8. In the premises the contemnor, **Mr. Bii Kenneth Ngeny**, is hereby fined a sum of Kshs 200,000.00 to be paid within fifteen days from the date of this ruling and default to serve two months in prison.

9. Orders accordingly.

Dated at Nairobi this 16th day of May, 2017

G V ODUNGA

JUDGE

In the presence of:

Mr Otongo for the Applicant

Miss Esani for Mr Nyamu for the Respondent

CA Mwangi