

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC CIVIL APPLICATION 227 OF 2015

ANISELIMO NJERU MBANDA.....APPLICANT

VERSUS

N. K. NYAGA, LAND REGISTRAR, MBEERE.....RESPONDENT

RULING

1. This is an *ex parte* application brought under Section 5(1) of the Judicature Act (Cap 8) Laws of Kenya seeking *ex parte* leave to punish the respondent for contempt of court namely for refusing to implement an order issued by the court of the Senior Principle Magistrate at Siakago on 31st January, 2013.

2. The application is brought by way of notice of motion and is supported by the grounds on the face of the motion and a supporting affidavit of the applicant. In his notice of motion counsel for the applicant has stated that the subject order was served on the respondent, who is the District Land Registrar, Mbeere South. After being served on 17th June, 2014, the Respondent contemptuously refused to implement what the order directed her to do. Furthermore, the Land Registrar was again served with a notice of being in contempt on 10th September, 2015. She again refused to comply. According to counsel for the Applicant, the Respondent's conduct undermines the dignity of the court and this kind of disobedience breeds anarchy and is a threat to the rule of Law. In the supporting affidavit, the Applicant has repeated what appears in the notice of motion namely that the Respondent has refused to implement the subject order.

3. According to counsel, the order directing the respondent to implement the court order has not been challenged either by way of appeal or review. He has also stated that the conduct of the respondent amounts to contempt of court. Furthermore, he has stated that the Respondent ought to be punished for disobeying the court order in order to uphold the dignity of the court.

4. According to ***section 5 (1) of the Judicature Act*** the High Court and Court of Appeal have the same power to punish for contempt of court as is for the time being possessed by the High of Justice in England, which power shall extend to upholding the dignity of subordinate courts. And in terms of ***section 5 (2) of the Judicature Act: "an order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court."***

5. I have perused the affidavit evidence of the applicant and the grounds on the face of the Notice of Motion. I find from the affidavit evidence that the order, which was allegedly not obeyed was issued on 31st January 2013 by the court of the Senior Resident Magistrate at Siakago, which is a subordinate court as contemplated by the provisions of section 5 of the Judicature Act. It is that court's dignity that is sought to be upheld. I therefore find that the Applicant has made out a case for the grant of *ex parte* leave to file for contempt of court proceedings against the Respondent.

6. The *ex parte* Applicant is hereby granted leave to file or to institute contempt proceedings against the Respondent.

7. There will be no orders to cost.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **26th** day of **MAY 2016**

In the presence of Mr Momanyi for the Applicant

Court clerk Njue

J.M. BWONWONGA

JUDGE

26.05.16