

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL MISC. APPLI. NO. 462 OF 2014

MOSES ONGONGA NYABINDA..... APPLICANT

• V E R S U S –

SHAMSHERALI HUSSEIN.....RESPONDENT

SENTENCE

1. Shamsherali Hussein, the 2nd defendant/Respondent was convicted for contempt of court orders issued on 29th November 2013. The Plaintiff/Applicant had successfully obtained an order of injunction to restrain the 2nd defendant and another from entering, trespassing interfering and or demolishing the Plaintiff's business premises and or kiosk located at Balozi estate (South B) pending the hearing interpartes hearing of the application for injunction vide Milimani C.M.C.C no. 7520 of 2013. The aforesaid order was served upon the 2nd defendant and his servants disobeyed the court order by removing the Plaintiff's kiosk from where it was initially located and dumped sand gravels in its place on 29.12.2013 to date.
2. Upon convicting the 2nd defendant as aforesaid, this court invited him to make oral submissions in mitigation before sentence. Mr. Malinzi, learned advocate for the 2nd Respondent state that his client is remorseful and regrets breaching the court orders.
3. The 2nd Respondent beseeched this court met out a lenient sentence. Mr. Malinzi further pointed out that the 2nd Respondent is an old man aged 70 years with ill health. He produced medical documents showing the 2nd Respondent had undergone coronary artery bypass graft surgery on 22nd March 2016.
4. After considering the mitigating factors, I am satisfied that the 2nd Respondent is remorseful.
5. In the application filed by the Plaintiff/Applicant, the Applicant sought for the contemnor to serving civil jail 6 months. I have considered the mitigating factors presented by the 2nd Respondent I am convinced that the appropriate sentence should be non-custodial. I think the most appropriate sentence is fine. Consequently Shamsherali Hussein is sentenced to pay a fine of ksh.100,000/= within a period of 21 days in default he should be arrested and taken to custody to serve civil jail for three(3) months in any government prison.

Dated, Signed and Delivered in open court this 20th day of May, 2016

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent