



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 111 OF 2016

CECIL MILLER PLAINTIFF

VERSUS

JACKSON NJERU1ST DEFENDANT

JACKLINE OKUTA 2ND DEFENANT

RULING

On 12th April, 2016 this court, at the instance of the plaintiff herein Cecil Miller, issued restraining orders against the two defendants Jackson Njeru and Jackline Okuta restraining them, their agents and or servants from posting on facebook or any other media platform, commenting, writing or providing any platform for comments by the general public about the plaintiff /applicant on any media platform. This order was served upon the two defendants.

That interim order was subsequently confirmed by Aburili J, on 25th April 2016 to last until the hearing and final determination of the suit herein. On 25th May, 2016 an application was presented before this court on behalf of the plaintiff against the two defendants for an order of committal to prison to be made against the two defendants as the court may deem fit and just, which order is intended towards protecting the dignity and authority of this Honourable Court.

The main reason is that, despite the existence of the court order, which has been served upon the two defendants they caused to be posted and comments made on facebook page **Buyer Beware** about the plaintiff/applicant by various agents of the defendants. The comments made therein have been cited. The application sought an order that the defendants be cited for contempt of court for intentionally breaching and or disobeying this court's order and in any event the court ought to preserve its dignity and authority.

On 25th May, this court made an observation that indeed the defendants were in contempt of the court order and should show cause why they should not be punished. Notices to show cause were accordingly issued and the two defendants required to appear in court on 2nd June, 2016 which they did.

Both defendants were led by their learned counsel to state their respective positions. Each confirmed they were aware of the court order prohibiting discussion on the social media, any comments touching on the plaintiff. The first defendant is the administrator of the platform **Buyer Beware** while the 2nd defendant in addition to being a contributor thereto has been mentioned severally by the contributors. The annexures in this record speak for themselves.

The court order related to the two defendants or their agents or their servants. The 2nd defendant denied

breaching the said order. She is however a member of that group. She knows a few members and especially the 1st defendant Jackson Njeru. The 2nd defendant has separate criminal cases relating to misusing of telecommunication devices. Under cross-examination she confirmed that in Criminal Case No. 992 of 2012 she was convicted. She is not in control of the posting but said after the court order she has attempted to stop the members from commenting on the issues. She could not however recall on which date she did so.

On the other hand, the 1st defendant stated that he had not posted anything concerning the plaintiff. Shown some of the comments he said he did not know the persons who made the postings. He also said that he had not breached the court order. He was however referred to some postings made after the court order which referred to Nyako Maber and he confirmed this was in reference to Jackline Okuta.

He made postings about a Criminal Case No. 672 of 2014 pending before the Principal Magistrate Court where he is jointly charged with the 2nd defendant. This was followed by several comments relating thereto. He did not post any caution to members restraining them from making any postings despite the fact that he is the administrator. He had not attempted to shut down the post to avoid the said postings.

Allegations of contempt of court attract a punishment which is punitive in forms of a fine or deprivation of somebody's freedom. Aware of the implications the courts must exercise caution in approaching such issues. At the same time, court orders should not be taken for granted and the dignity and authority must be jealously guarded.

Freedom of expression is provided in the constitution but it not absolute. That is why where a court issues orders of any nature to protect the rights of individuals, it is also right to pin the said orders on the dignity of the court.

Having been cited for contempt I expected the two defendants to either purge the contempt, or offer an apology. Instead a denial was registered. They knowingly read and watched the postings by their members. It is immaterial whether or not they knew these members. They both had the power to caution the members but did not. They had the power to bring down the platform but they did not. They allowed more comments to be made without due regard to the court order or the rights of others. The two aided and abated the breach of the court order. They must therefore be punished for that breach. Each of the two defendants is hereby fined Kshs. 500,000/= in default to serve 3 months imprisonment.

Dated, signed and delivered at Nairobi this 14th Day of June, 2016.

A. MBOGHOLI MSAGHA

JUDGE