



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT DIVISION

E & L COURT CASE NO 35. OF 2013

JUDAH K. M'MBIJIWE M'RUKARIA.....PLAINTIFF/APPLICANT

VERSUS

CECILIA KIRUJA.....1ST DEFENDANT/RESPONDENT

KIRIINYA KIRUJA.....2ND DEFENDANT/RESPONDENT

R U L I N G

1. This Ruling emanates from an application dated 3/4/2013. It sought orders:-

- 1. THAT the Application herein be certified as urgent and the same be heard on priority basis.**
- 2. THAT an order be issued for arrest and detention in prison for a term not exceeding six months against the Defendants/ Respondents for disobeying the court order issued herein on 29th January, 2013.**
- 3. THAT the order herein be served upon the O.C.S Subuiga Police Station for enforcement.**
- 4. THAT costs of this Application be provided for;**

2. It was supported by the affidavit of JUDAH K. MBIJIWE M'RUKARIA and has the following grounds:-

- a) THAT the Defendants/Respondents were served with the orders issued on 29th January, 2013.**
- b) THAT the Defendants/Respondents have disobeyed and continued to disobey the order given herein issued on 29th January, 2013.**
- c) THAT the Defendants have become violent and are now threatening the Applicant with dire consequences including threats of assault and grievous bodily harm.**
- d) THAT the Defendants/Respondents have no respect for the rule of law and have vowed not to obey any Court orders.**

3. On 08/03/2016, the following orders were granted:-

- 1) An order is issued for the arrest and detention in prison for a term of six months against the 2nd Defendant KIRIINYA KIRUJA for disobeying this Courts' Order issued on 29/01/2013.**

2) The Order to arrest and detain the 2nd Defendant KIRIINYA KIRUJA, be served upon the O.C.S Subuiga Police Station for enforcement.

4. Mwirigi Kaburu, the Contemnor's Advocate, filed an application dated 27th May, 2016 seeking his release. The application seeks orders.

(1) THAT this application be certified urgent and the same be heard exparte in the first instance.

(2) THAT pending the interpartes hearing of this application, an order be issued, lifting the committal to jail against the 2nd Defendant/Applicant and the 2nd Defendant/Applicant be released from jail.

(3) THAT the orders issued on 08/3/2016 citing the Applicant for contempt and jailing him for six months, be reviewed and set aside.

(4) THAT the costs be provided for.

5. It is supported by the Affidavit of KIRIINYA KIRUJA and has the following grounds:-

(a) THAT there was no personal service of the orders issued on 29/01/2013 upon the Applicant.

(b) THAT the orders dated 29/01/2013 did not have the mandatory penal notice.

(c) THAT there is no affidavit of service of the orders dated 29/01/2013.

(d) THAT the Applicant was condemned unheard and on a date fixed for directions as to the Hearing of the suit.

6. The grounds relied upon in the application are untruthful and tendentious in that on 20.02.2013 the Contemnor and his mother admitted that they were aware of the apposite order but nonchalantly told the Court that they had no choice but to bury the concerned body in the Plaintiff's land. Therefore, this application is not meritorious.

7. However, On 27/07/2016, Mr. Mwirigi told the Court that Kiriinya Kiruja, the Contemnor was remorseful. He said that his mother was seriously ill and may have been affected by the son's incarceration. He prayed for his release from prison.

8. Mr. Ashava for the Plaintiff told the Court that Mr. Mwirigi had discussed the matter with Mr. Kaume and had agreed that the orders issued by the Court on 8/3/2016 could be lifted. Mr. Mwirigi undertook to advise his Client, Kiriinya Kiruja, never to disobey Court orders.

9. I grant the following orders:-

(1) The Order issued by this Court on 08/03/2016 for the arrest and detention in prison for a term of six months against the 2nd Defendant, KIRIINYA KIRUJA for disobeying this Court's order issued on 29/1/2013, is hereby lifted.

(2) Costs shall be in the cause.

(3) Deputy Registrar or any other Magistrate to sign the apposite release order.

7. It is so ordered.

DELIVERED IN OPEN COURT AT MERU THIS 27TH DAY OF JULY, 2016 IN THE PRESENCE OF:-

CC: Daniel/Lilian

Mwirigi for Applicant

Ashava for the Plaintiff.

P. M. NJOROGE

JUDGE