

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

ENVIRONMENT AND LAND CASE NO. 84 OF 2013

HOSEA SHOSOKHO MANYASA.....PLAINTIFF

VERSUS

JOSEPH MUTOKODEFENDANT

RULING

The Plaintiff filed an application dated 20th March, 2014 seeking to stop the Defendant from burying his wife on Plot Number BUTSOTSO/SHIBEYE/670. The court granted interim orders on 21st March, 2014. The Applicant was served but the body was still buried on the land.

The Plaintiff filed an application dated 16th April, 2014 seeking to have the Defendant punished for contempt of court. Counsels for both parties agreed to determine the application by way of written submissions. The Applicant contends that the Defendant was duly served with the court order but decided to defy it and the burial continued. On the other hand the Defendant maintains that although he was served with the order, the burial continued in his absence as he went to Kakamega to look for an advocate to respond to the suit. His children and relatives did the burial.

I have carefully considered the application, the replying affidavit and the submissions by both counsel. It is clear that the court issued interim orders and the Defendant was served on time before the burial. According to the Defendant, he was served late on Friday. The contention by the Defendant that it is his children and relatives who did the burial is just an excuse. The children could not have buried their mother had the Defendant informed them about the court order.

Similarly, the contention of Counsel for the Defendant that the order was conditional on depositing security cannot offer the Defendant any reprieve. The order was issued on 21st March, 2014 and served the same day. The burial was done on 22nd March, 2014. How did the Defendant know that the Plaintiff had not deposited any security for him to decide not to obey the order? Does it mean that he decided to disobey the order as he knew that no security was going to be deposited. Even if no security is deposited, the court order still stands. The effect of the court order could not be eroded by the non-payment of the deposit. The Defendant could have applied to have the orders vacated.

I have read the submissions by the defence counsel. It is clear that even the defence counsel concedes that there was contempt of court. Counsel in his submissions pleaded that a proper and befitting way of punishing this contempt be found as the Defendant is an old man and of poor health.

From the pleadings herein, I do find that the Defendant was duly served but chose to disobey the court order. The orders were in force and valid. Allowing such actions to go unpunished is to erode the rule of law. The Plaintiff is the registered proprietor of the suit land. The Defendant's claim on the land is that he at one time wanted to purchase the land and has been living on it. Before his claim is granted, he should know that the land has its registered owner.

I do find that the Defendant is in contempt of court. I do find that the submissions by the defence counsel provide enough mitigation on the punishment to be meted out on the Defendant. The Defendant is hereby fined Kshs. 40,000 and in default to serve 30 days imprisonment. The Defendant shall also pay the Plaintiff costs of this application.

Dated signed this **9th** day of **January, 2015**

Said J. Chitembwe

JUDGE

Dated, delivered and counter signed this 27th day of March 2015

Ruth Sitati

JUDGE