



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NO. 462 OF 2014**

**MOSES ONGANGA NYABINDA.....PLAINTIFF**

**VERSUS**

**NAIROBI CITY COUNTY.....1<sup>ST</sup>DEFENDANT**

**SHAMSERALI HUSSEIN.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Plaintiff filed an application for injunction in Milimani Commercial CMCC No. 7520 of 2013. On 29<sup>th</sup> November, 2013, Hon. C. Obulutsa issued an order of injunction restraining the Defendants and/or their agents from entering and/or trespassing and/or interfering and/or demolishing the Defendants business premises and/or kiosks located at Balozi Estate (South B) pending inter-parties hearing on 13<sup>th</sup> December, 2013.
2. The Plaintiff alleges that despite service of the said order on 6<sup>th</sup> December, 2013, the 2<sup>nd</sup> Respondent on 7<sup>th</sup> December, 2013 together with his servants disobeyed the said order by removing his kiosk from where it was initially located and dumped sand gravels at the location. That from 29<sup>th</sup> December, 2013 to the date of the application, he has not been carrying out any business at the kiosk despite the 1<sup>st</sup> Defendant issuing him with trade licence for carrying out his business for the year 2014. In his notice of motion dated 17<sup>th</sup> February, 2015, the Plaintiff seeks the following orders:-
  - i. ***That this court be pleased to cite the 2<sup>nd</sup> Defendant for contempt of court order issued on 29<sup>th</sup> November, 2013.***
  - ii. ***That this court be pleased to order the 2<sup>nd</sup> Defendant to be detained in prison for a term not exceeding six months.***
  - iii. ***That this court be pleased to order the Officer Commanding Station (O.C.S.) Industrial Area Police Station to arrest the 2<sup>nd</sup> Defendant in compliance of the said order.***
  - iv. ***That this court be pleased to order the 2<sup>nd</sup> Defendant to pay the Plaintiff a sum of KShs. 8,200/- per day being loss of business profits from 6<sup>th</sup> December, 2013 to the date of application amounting to KShs. 7,450,400/= until final determination of this matter.***
3. The application is based on the grounds on body of the application and the supporting affidavit of the Plaintiff herein.
4. The jurisdiction of this court to punish for contempt of court is provided for under Section 5 of the **Judicature Act (Cap. 8)**, which provides-

**5(1) The High Court and the Court of Appeal shall**

**have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.**

**(2) 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. This court has powers to commit a person for contempt of court for disobeying court orders. The general rule governing the obligation of persons to obey court orders was stated in the case of **Hadkinson v Hadkinson [1952] ALL ER 567**, in which Romer LJ stated at page 569-

***“It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made against by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.”***

6. Knowledge of such court order is necessary before one can talk of its disobedience. In this case, the court order was served on the Defendants. This application was also served on the Defendants but they failed to respond to it. To my mind, it is incumbent upon a party faced with such an application to defend himself. The standard of proof in matters of contempt as discussed in . **Mutitika v. Baharini Farm Limited (1985) KLR 229** is higher than proof on a balance of probabilities. It is almost but not exactly beyond reasonable doubt. This is because the charge of contempt of court is akin to a criminal offence and a party is likely to lose his liberty.
7. I find Shamsherali Hussein guilty for contempt of court.
8. I hereby issue a warrant of arrest to be executed by the officer commanding Industrial Area Police Station who should apprehend Shamsherali Hussein and bring to this court on 28<sup>th</sup> May,2015 before sentencing.
9. Cost of the application to be met by the 2<sup>nd</sup> Defendant.

Dated, Signed and Delivered in open court this 15<sup>th</sup> day of May, 2015.

J. K. SERGON

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendants