



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC PETITION NO. 10 OF 2019

IN THE MATTER OF THE CONSTITUTION OF THE REPUBLIC OF KENYA

AND

**IN THE MATTER OF ARTICLE 2 (1) (2) (4) (5) (6) ARTICLE 3 (1) ARTICLE 20 (1)(2) (3) (4) ARTICLE 21 (1),
ARTICLE 22 (1) (3), ARTICLE 24 (1) (2) (3), ARTICLE 40, ARTICLE 50 (1), ARTICLE 60 (1) (B) & ARTICLE 64 (B).**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS OF
AN INDIVIDUAL AS ENshrined IN ARTICLE 40 & 47 OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER FO THE LAND REGISTRATION ACT SECTIONS 24, 25 & 26

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS OF THE INDIVIDUAL) HIGH COURT PRACTICE RULES, 2006**

AS READ WITH CLAUSE 19 OF THE CONSTITUTION OF THE REPUBLIC OF KENYA

TRANSITIONAL CLAUSES AND CONSEQUENTIAL PROVISIONS OF THE SCHEDULE

TO THE CONSTITUTION

BETWEEN

KATANGI DEVELOPERS LIMITED.....PETITIONER/APPLICANT

VERSUS

THE HON. ATTORNEY GENERAL.....1ST RESPONDENT

KENYA RAILWAYS CORPORATION.....2ND RESPONDENT

RULING

The application before Court is dated 9/12/2021. The applicant seeks orders that the Principal Secretary Ministry of Interior and Co-ordination of National Government be arrested and/or committed to civil jail for such time as the Honourable Court shall deem just and expedient for being in disobedience of this Honourable Court's Orders of 8th October, 2021.

The Managing Director of the Kenya Railways Corporation be arrested and/or committed to Civil Jail for such time as the Honourable Court shall deem just and expedient for being in disobedience of this Honourable Court's orders of 8th October 2021.

That the Inspector General of Police to enforce these orders by arresting the above cited contemnors and bringing them to Court for sentencing and committal. The costs of this Application be paid by the Respondents in any event.

The application based on grounds that the Applicant moved this Honorable Court via its Application dated 21.4.2021 seeking that the Principal Secretary Ministry of Interior and Co-ordination of National Government and the Managing Director of the Kenya Railways Corporation be arrested and/or committed to Civil Jail for such time as the Honourable Court shall deem just and expedient for being in disobedience of this Honourable Court's Orders of 16th March 2021.

That after considering the said application on its merits, this Honourable Court delivered its ruling on 8th October, 2021 directing the Respondents to comply with the Court Orders delivered by the Court within 30 days as if the Orders were issued on the 8th October, 2021. That despite service of the decree and their knowledge of the said order of 8th October 2021, the Respondents have still refused to comply with the said Order of this Honourable Court.

The applicant contends that the respondents have by their actions made it clear that they are not willing to comply with Court orders unless punitive measures are taken against them and that the Orders prayed for here are now necessary in order to preserve the dignity of this Honourable Court: to uphold the rule of law: and to protect the proprietary rights of the Petitioner/Applicant as a person entitled to equal protection of the law.

The ruling and the orders of the court are annexed to the supporting affidavit.

The 2nd respondent in further affidavit states that this Honourable Court gave mandatory orders compelling the respondents to remove all barriers and blockades erected which denied the petitioners access to the suit properties. The 2nd respondent reiterated that the said fences and barriers were erected by the National Government and which has been undertaking in development projects towards the revitalization of Kisumu Port within the suit premises.

That the said premises in which other projects are being undertaken by the National Government in a bid to revitalize the Kisumu Port has been and is currently under the guard and protection of National Youth Service, an organization under the National Government.

The 2nd Respondent further states that it is not true that the suit premises have blocked off the petitioners' access to the property as alleged. The premises are accessible as exhibited by the annexed photographs.

The 2nd Respondent reiterates that by virtue of the said premises being erected by a multi-agency team of the National Government and not the 2nd respondent, the 2nd respondent and/or its Managing Director lacks any control over the actions of the National Government.

That in the circumstance, neither the 1st respondent nor its Managing Director willfully disobeyed this court's judgment as they are not in control of the National Government nor its actions. The application should be dismissed.

I have considered the application and do find that the application is merited as the orders made by this court have been **deliberately and continuously** not been complied with by the respondents. The respondents have not shown any will to obey the court orders.

I do hereby order that the Principal Secretary Ministry of Interior and Co-ordination of National Government be arrested and/or committed to civil jail for 60 days for disobedience of this Honourable Court's Orders of 8th October, 2021.

The Managing Director of the Kenya Railways Corporation be arrested and/or committed to Civil Jail for a period of 60 days for disobedience of this Honourable Court's orders of 8th October 2021.

That the Inspector General of Police to enforce these orders by arresting the above cited contemnors and bringing them to Court to start serving their sentences.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 31st DAY OF MARCH, 2022

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2020.