



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

ENVIRONMENTAL AND LAND COURT

CIVIL SUIT NO. 351 OF 2010

SERAH NYAMBURA T/A CRAYFISH CAMP...APPLICANT

VERSUS

KARUTURI LIMITED RESPONDENT

AND

NAGESH KARUTURI RESPONDENT

RULING

1.This ruling is on an application made by the plaintiff/ applicant by way of notice of motion dated **18th October , 2011** under order 5(1) of the Judicature Act Cap 8 Laws of Kenya, order 52 rules 2(2) of the rules of the Supreme Court of England and all enabling provisions of the Law), seeking among other orders that, **this honourable court be pleased to find the respondents guilty of contempt of court orders and commit the 2nd respondent to civil jail for a period of six months for disobeying the court order made on 17th December, 2010: that the honourable court do order the attachment of the 1st respondent's properties and the usual order on costs**

2.The application is premised on the grounds that :

- i. The Karuturi Limited was on 17th December, 2010 restrained by itself or any other person acting under their authority from interfering with the applicant's remainder tenant access and howsoever dealing with land parcel numbers 12248/16, 12248/17 and 12248/18 which form part of the larger grant I.R 12248 without the written consent of the plaintiff.
- ii. Subsequent to the order Nagesh Karuturi the C.E.O of the Karuturi Limited was served on 18th December, 2011 with the order of the honourable court.
- iii. Despite being served with the order Nagesh Karuturi the respondent herein has refused and or ignored to comply with the order of this court.

(iv) The respondents actions undermine the actions of the court

(v) The applicant has already obtained leave to commence contempt proceedings vide the order of this honourable court granted on 14th October, 2011.

3.The application is supported by the affidavit of Serah Nyambura sworn on **14th October, 2011**. she has

averred that she was granted orders *ex parte* on 17th December, 2010 and the 2nd respondent duly served with the order on the 18th December, 2010; that despite the 2nd respondent having knowledge of the order he has continued to host matches and in conjunction with Kenya Broadcasting Corporation using DSTV, has been airing matches from the parcel of land which events of 12th June, 2011 were reported in the Daily Nation; that the respondents' actions bring the dignity of this honourable court to disrepute and undermines its authority

4. The application is not opposed.

5. When the application came before me for inter parties hearing on 16th December, 2013 Counsel for the applicant rehearsed what was stated on the grounds on the face of the application and the supporting affidavit of the applicant.

6. Having considered the submissions by counsel for the applicant and the pleadings filed, I find the issue for determination to be whether the respondents have flouted the orders issued by the court on 17th December, 2010.

7. The power to deal with contempt of Court/disobedience of court orders is provided for under **Section 5 of the Judicature Act Cap 8** Laws of Kenya and **Order 40 rule 3 of the Civil Procedure Rules 2010**.

8. Committing the respondents to civil imprisonment for contempt of the court order is a serious matter and I adopt the observations by Lord Denning MR in the case of **Re Bramblevale (1990) 1 Ch.1 128 or (1969) 3 All E.R. 1062** namely "**contempt of court is an offence of a criminal nature. A man may be sent to prison for it. It must be satisfactorily proved. To use the time honoured phrase, it must be proved beyond reasonable doubt**"

In another case of **Re B (FA) an infant** (1965) ch. 112 at 1117- **cross J**. observed

" committal is a serious matter. The court must proceed very carefully before they make an order to commit to prison"

9. Further, the court must be satisfied that the terms of the injunction issued are clear, unambiguous, that the defendant has proper notice of the terms and that breach of the injunction has been proved beyond reasonable doubt.

See **Mwangi Mangondu v. Nairobi City Commission** (Civil Appeal No. 95 of 1988) unreported) where **Ochieng J** held,

" the Court will only punish as a contempt, a breach of injunction if satisfied that the terms of the injunction are clear and unambiguous, that the defendant has proper notice of the terms and that breach of the injunction has been proved beyond reasonable doubt."

10. All individuals and institutions need to uphold the rule of Law and due administration of justice and the courts shall be vigilant that its orders are not made in vain and are flouted without any deterrence. This was so upheld in the case of **Morris & Others v. Crown Office** (1970) 2QB 114 at 122, **Lord Denning M.R** "of all places where law and orders must be maintained, it is here in these courts. **The court of justice must not be deflected or interfered with. Those who strike at it strike the very foundations of our society**" and also in **Bedrock Holdings v. Erick Okeyo**, KSM HCCC NO.23 of 2004, by **M. Warsame Ag. J.** (as he then was).

"The issue of contempt is against the judicial process, and the court would ensure it protects and preserves its dignity and stamps its authority against such disobedience, for it is dangerous to wilfully decide what to do with a court order. It is not within the province of parties and their advocates to decide and determine what to obey, when to obey and how to enforce court orders.

11. But on the other hand, courts have to administer justice and protect the rule of Law considering the interest of both sides. The onus is on the applicant to prove that the respondents have committed this serious offence and is culpable to receive punishment for compromising the dignity of the court.

12. In the instant case, an order of injunction was issued by this court on 17th December, 2010 in the following terms:

“That pending the hearing and determination of this application the defendant be and is hereby restrained by itself, its employees, agents and any other person acting under their authority from interfering with the applicant's remainder tenant access and howsoever dealing with land parcel numbers 12248/16, 12248/17 and 12248/18 which form part of the larger grant I.R 12248 without the written consent of the plaintiff”

13. From the affidavit filed by the applicant, her major complaint is that the 2nd respondent has continued to host matches and in conjunction with Kenya broadcasting Corporation using DSTV has been airing matches from the parcel of land which events of 12th June, 2011 were reported in the daily nation in contravention of the court order which ordered that her consent must be sought before the respondents dealt with any of the suit parcels.

14. From the photographs annexed by the applicant of what appears to be a stadium, it does not come out clearly that the photographs relate to the stadium referred to in the affidavit. A newspaper cutting was also annexed. Equally it also does not state that the football match that took place on 12th June, 2011 between Karuturi sports and Sony Sugar took place at the any of the suit parcels. Although the application is not opposed, the onus to prove that the offence was committed beyond reasonable doubt lies on the applicant.

15. In my humble view, I am not satisfied that the applicant has proved to the required standards that the respondents have committed the offence of contempt of the court order as alleged.

16. I find that the orders sought cannot lie. Accordingly, the application dated **18th October, 2011** is hereby dismissed with costs.

Dated and delivered at Nakuru this 24th day of January 2014

L N WAITHAKA

JUDGE

PRESENT

Mr Musood for the Applicant

Mr Karanja Mbugua for the Respondent

Emmanuel Maelo : Court Assistant

L N WAITHAKA

JUDGE