



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
ELC PETITION NO.149 OF 2014

NGURUMAN LIMITED..... PLAINTIFF

VERSUS

DAVID NKEDIANYE 1ST DEFENDANT

JOSEPH OLE LENKU 2ND DEFENDANT

JOSEPH NKAISSERY 3RD DEFENDANT

PETER MOSITET 4TH DEFENDANT

TARAIYA KORES 5TH DEFENDANT

PETER PARIKEN 6TH DEFENDANT

PERIS TOBIKO 7TH DEFENDANT

MOSES SEKUDA 8TH DEFENDANT

R U L I N G

1. On 3.11.2014 the court issued orders where the court directed that the inspector General of Police hereinafter referred to as the IG to:
 - ensure that the Plaintiff's property named is effectively and adequately protected from any further invasion and destruction by Shompole Group Ranch and Ol Kiramatian Group Ranch hereinafter referred to as SGR and KGR or any other person.
 - ensure the militia and others from SGR and KGR who invaded the Plaintiff's property subject matter of this suit and remained in armoured occupation thereof are forthwith removed from the suit property and every part thereof.

The stamp on the order indicates that the same orders were served upon the IG on the 4.11.2014.

2. On 10.11.14 the court ordered that the IG to appear in court personally on 18.11.2014 to give report on orders/directives above given on 3.11.2014 on application of Applicant Advocate. The IG's report was to enable the Applicant and court to know the steps taken on the orders of 3.11.2014. The IG does not deny the service of the orders dated 10.11.2014, however, come 18.11.2014 he never appeared in court.

3. The Applicant's Advocate asked the court to consider issuing warrants for the arrest of the IG to be brought to court or a further order be issued for his personal attendance on 25.11.2014. The court issued summons for the IG to attend personally to give the report sought by the Applicants. The IG was served with summons on 21.11.2014 to attend court on 25.11.2014.
4. On 25.11.2014 the IG never appeared but instead sent the Kajiado Ag. Police Commander to appear on his behalf accompanied by Mr. Terrell a State Counsel. Mr. Ahmednasir, Applicant's advocate addressed court and sought the court to issue warrant of arrest of the IG for purposes of being brought to court to give report as sought in the matter.
5. The Applicant counsel submitted that the IG has to appear in person as stipulated in the order and not via any representation or agent. The order directed that he appears in person to explain why he did not comply with orders of 3.11.2014 and 10.11.2014. The counsel submitted that the IG was to appear on 18.11.2014 but he failed. The court directed him to appear personally on 25.11.2014 but he has failed to obey court orders. He sought court to issue warrants to be executed by the officer in-charge of Central Police Station Nairobi to arrest IG and produce him in court. He submitted that Article 1 of the Constitution vests sovereign power in people of Kenya and is delegated to state organs. Article 2 declares the Constitution to be supreme law of the land and binds all persons and all state organs.
6. He submitted that the IG has an obligation under Article 3(1) to respect, uphold and defend the Constitution. He submitted that the IG has no choice but to obey the court orders. He further submitted that the IG is in breach of Article 10 of the Constitution on national values and principles of governance which among values are the rule of law, human rights inter alia. Further the IG is in breach of the provisions of chapter six of Constitution on leadership and integrity and in particular Articles 73, 74 and 75. He emphasized that the breach of the aforesaid provisions attracts disciplinary action inter alia.
7. He further submitted that the IG is appointed under Article 245 of the Constitution and he is insulated from interference from any quarters in discharge of his duties. He has to exercise his duties independently and especially in investigations and enforcement of the law. The Cabinet Secretary though can give directions to the IG, same are confined to the matters of policies only.
8. He submitted that the disobedience of the law weakens the governance structure and thus should be taken very seriously. This damages also the court repute. He submitted that the IG is deliberately disobeying court orders and thus warrants should issue as prayed.
9. State Counsel Mr. Terrell for the IG stated that the report sought is in court dated 24.10.2014 and the IG is not able to attend court. He urged the court to take judicial notice of the security crisis in the country such as witnessed in Mandera and Kapedo incidences. He stated that the IG works with agents on the ground but he himself concentrates on policy matters. He intimated that the report carries the content on the situation as it prevails on the ground of the suit property and sought the Kajiado Police Commander to present it.
10. He urged the court not to issue warrants against the IG. He also urged the court to dispense with the IG's attendance to court personally. He submitted that the report provides time-table under which the court orders will be adhered to and especially maintenance of peace in Nguruman area. He urged the court to allow Kajiado County Police Commander to present report as he is the author of the same.
11. Mr. Okoth for Defendants No.1,3,4,5,6,7, and 8 agreed with Applicant counsel that court orders must be obeyed at all times. He confirmed that summons were issued by court on 18.11.2014 for the IG to attend court but he submitted that the IG may have thought that the report would suffice and thus sent the agent. He may have thought the report would dispense with his attendance and thus asked court to give him another chance.
12. The Applicant rejoinder is that, the IG is merely giving excuses and constant explanations. The orders are clear and the IG says he is busy to attend court. He submitted that the security issues they are talking about are the same as the ones he is being called to explain. The properties have been damaged and stolen in breach of security of Nguruman. The State Counsel is not saying that he will bring IG but seeks to ensure that IG will never come to court. He urges the court to compel the IG to come to court via warrants of arrest.
13. The court gave Mr. Terrell at his request time to contact IG and confirm when he can attend court without warrant being issued, but after a short moment sought it never bore any result he opted to intimate that he intends to file an application to vary or review the orders requiring the IG to

- attend court personally.
14. The court has perused the orders and record in the file and listened to the parties advocates and IG counsel. It is not denied that the IG has been served with all orders and summons to attend court which specifically directed him to appear personally. In the ***NAIROBI LAW MONTHLY VOL.5 issue No.11/NOV. 2014 at page 19*** the president while addressing East African Magistrates and Judges Association (EAMJA) AGM in Nairobi is quoted to state:
- “.. .Government Commitment to rule of law in Kenya cannot be questioned. Just recently, I took steps of honouring summons of ICC both as a personal obligation and to demonstrate the principle that observance to judicial edicts is vital. The rule of law depends in no small measure on respect for judicial authority..... Government unwavering commitment to the rule of law is part of or solemn pledge to honour, obey, uphold and defend the Constitution of the Republic of Kenya at all times..... We may not always like the orders issued by the courts, we may profoundly disagree with their substance but I believe that we will never disregard them for in doing so we would be showing contempt to the very same Constitution from which we draw our own powers and authority”***
15. The IG has failed to obey the orders of 3.11.2014, 10.11.2014 and the summons of 18.11.2014 despite service. There is no contest that he was never served but that he is too busy to attend court and in any case he has agents on the ground who can ably represent him. It does not matter that the order requires him personally to attend.
16. In the matter before the court, the Defendants are members of Parliament and the Governor of Kajiado County. The 2nd Defendant is the Cabinet Secretary in-charge of the internal security docket. All the Defendants are being accused of being instrumental to the incitement to, invasion of and destruction of the Plaintiff's property. The 2nd Defendant in an affidavit sworn on 5.11.2014 by Moses Loontasati on paragraph 16 is accused of encouraging, counseling, procuring, aiding and abetting directly or indirectly, Defendants No.1, 3, 4, 5, 6 7 and 8 to hold illegal meetings in suit property and remain thereon.
17. The aforesaid accusations to the very top head of Security Docket requires a very serious attention and to be handled by the very top security operatives. It is imperative the IG to come out clearly and in person to dispel the feeling and the thought that he has been unconstitutionally emasculated by politicians in discharge of his duties in security matters as in the one alleged to inflict Nguruman Properties.
18. It is not enough for the IG after flouting the court orders to send an operative officer in Kajiado to come to court and tell court that he has compiled a report on IG's instructions. The 4 page report is not the IG's report ordered by the court but a Mr. Langat's acting County Police Commander Kajiado report. The court is exercising the authority from the people of Kenya under Article 159 (1) which flows from the sovereign power of people under Article 1(1) of the Constitution. The IG is bound by the supreme law and under Article 3(1) he is obliged to respect, uphold and defend the Constitution.
19. As in the words of the president quoted supra, “disobedience of court orders is showing contempt to the very Constitution from which he draws his (IG) power and authority.

The questions are:

- Is the IG bound to appear in person in court as ordered by court or he can delegate?
 - Has the IG breached court orders issued by the court?
 - Should the court issue warrants?
20. The orders of 3.11.2014, 10.11.2014 and 18.11.2014 required IG to appear in person but he failed. Thus he has violated the orders as conceded by all the counsels. There is nowhere service is disputed of the orders stated. Whereas the applicant seek warrants of arrest of the IG, the Respondents No.1, 3, 4, 5, 6, 7 and 8 urge court to give IG another chance. The IG counsel though he says the IG has not refused to appear in court, he intimates that he intends to seek to review or vary the orders. He on another breath seeks to have IG's subordinates to step in and tender the so called IG's report.

21. The court is not oblivious of the current security problems in the country and takes judicial notice that the IG is in the thick of the operations to tame the situation. However, Nguruman insecurity is also part of the chain of insecurity incidents which are threatening the very core of our rule of law, peace and security.

22. Taking all circumstances into considerations, I make the following orders:

1. The court directs that the IG to appear in court to present a report on orders of 3.11.2014 in two (2) weeks' time on a day to be agreed.
2. In default warrants of arrest to issue without further application for IG to be arrested by the Officer-in-charge, Central Police Station Nairobi and be presented to court for further orders.
3. Further directions on the date to be fixed.

Orders accordingly.

Signed and Delivered at Machakos, this 26th day of November, 2014.

CHARLES KARIUKI

JUDGE