



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION

CIVIL SUIT (ELC) NO.33 OF 2008

RAPHAEL NGUGI GITHUKU.....PLAINTIFF/APPLICANT

VERSUS

DAVID THUO.....DEFENDANT/RESPONDENT

R U L I N G

1. By a notice of motion dated 22nd October, 2010, Raphael Ngugi Githuku, who is the plaintiff in this suit (hereinafter referred to as the applicant), seeks to have the defendant David Thuo, (hereinafter referred to as the respondent), committed to civil jail for contempt of court orders made on 5th May, 2008. The applicant swears that contrary to the consent order made by Osiemo J. on 5th May, 2008, that no construction shall be undertaken on the suit properties pending the hearing and determination of the plaintiff's suit, the respondent is continuing with construction on the suit property. The applicant contends that the respondent is aware of the court order, having been served with the order and the penal notice on 21st October, 2010.
2. The respondent objects to the application. He swears that since the order in the suit property was made, he has not carried out any construction on the suit property. He therefore denies being in contempt of the court order.
3. I have considered the application before me. Although the applicant contends that the respondent is in contempt of the court orders, no evidence has been tendered in support of this allegation. In his affidavit the applicant refers to "information he has received". However, the applicant has not revealed the source of that information. The copies of photographs annexed to the applicant's affidavit, shows that there have been trenches dug on the premises for a foundation. That however appears to have been the position on 7th February, 2008 when the applicant filed this suit as paragraph 7 and 8 of the plaint makes reference to the foundation trenches which were being dug on the suit property. Therefore, I find no evidence that the respondent has continued with any further construction.
4. In the circumstances, I find no merit in this application and do therefore dismiss it with costs.

Dated and delivered this 4th day of February, 2011

H. M. OKWENGU

JUDGE

In the presence of: -

J.K. Gachie for the plaintiff/applicant

Ndegwa H/B for the defendant/defendant

B. Kosgei - Court clerk