



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE
Civil Case 160 of 2006
MARY WANGARI GICHUKIPLAINTIFF.

VERSUS

JOHN KIARIE GICHUKIDEFENDANT.

RULING.

By a chamber summons dated 17th June, 2009, pursuant to the provisions of order XXXIX Rule 2A (2) of the Civil Procedure Rules and section 3 A and 63 (c) of the Civil Procedure Act and section 5 of the Judicature Act, the applicant seeks orders.

1. **THAT**, this application be certified as urgent and the same be fixed for hearing on a priority basis.
2. **THAT**, the defendant/respondent John Kiarie Gichuki be summoned to appear in court for the hearing of the application for committal to jail.
3. **THAT**, this honourable court be pleased to punish the defendant/respondent for disobeying a court order made on 19/3/2009 and issued on 9/4/2009 by committing the defendant/respondent to prison for a term to be fixed by the court.
4. **THAT**, the defendant do pay costs of the application.

The application is based on the grounds:-

- (a) **ON** 19/3/2009 the defendant was by a court order restrained from interfering with the suit property in any way.
- (b) **THE** defendant was personally served on 15/4/2009.
- (c) **THE** defendant/respondent has not complied with a court order.
- (d) **THE** defendant/respondent has threatened to unleash violence on the plaintiff and he has on occasion physically confronted the plaintiff upon her entering the suit property.

The application is further supported by the annexed affidavit of Mary Wangari Gichuki sworn on this 17th day of June, 2009.

On behalf of the applicant, it was argued that there is a court order exhibited as “MWG1” dated 9th April, 2009

restraining the defendant, John Kiarie Gichuki, from dealing in the suit property.

Armed with the said court order, Mary Wangari Gichuki personally accompanied the court process server Godfrey Masinde Sitati to the home of the defendant. The applicant pointed out to the respondent to the court process server who duly served the defendant. [the defendant declined to sign on the copy to be returned to the court exhibited as “MWG2”.

On 16th April, 2009 applicant was to plough the suit property but the defendant chased her away, and threatened to cut her with a panga. The applicant reported this incident to Moi’s Bridge Police station where it was entered in the occurrence book and police officers were ordered by the said station’s OCS to arrest the respondent as per exhibit “MWG 3”

It was the applicants contention that by his conduct the respondent has breached a court order dated 9th March, 2009 and should be accordingly punished.

The law on contempt of court is now well settled. The power to deal with contempt of court is provided for under section 5 of the Judicature Act (Cap 8) Laws of Kenya and order XXXIX rule 2 (3) of the Civil Procedure Rules. The Kenyan courts have to follow the procedure and practice in England. The English position is that as a general rule, the order of court requiring a person to do or abstain from doing any act may be enforced by committing him for contempt unless a copy of the order has been served personally on the person required to do so or abstain from doing the act in question. The copy of the order served must be personally on the person required to do or abstain from doing the act in question. The copy of the order must be endorsed with a notice informing the person on whom the copy is served that if he disobeys the order, he is liable to the process of execution to compel him to obey it. This requirement is important because the court will only punish as a contempt of breach of injunction if satisfied that the terms of the injunction was clear and unambiguous, that the defendant had proper notice of the terms and that the breach of the injunction has been proved beyond reasonable doubt. (SEE MWANGI WAGONDU VS. NAIROBI CITY COMMISSION (CIVIL APPEAL NO. 95 OF 1988) (UNREPORTED) AND JACOB ZEDEKIA OCHIRU & ANOTHER VS. GOERGE AURA OKAMBO & 4 OTHERS (CIVIL APPEAL NO. 38 OF 1989 (UNREPORTED)).

I have scanned through the application and the annexures thereto. Having done so, I am of the persuasion that all that the applicant was required to do by law was done. Accordingly the contempt was proved beyond reasonable doubt. I sentence the respondent to serve sixteen (16) months in prison or to pay a fine of Ksh. 10,000/=.

Dated and delivered at Kitale this 3rd day of February 2010.

N.R.O. OMBIJA.
JUDGE.