



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**CIVIL SUIT NO. 4 OF 2010**

**KODECK MAGATI ..... PLAINTIFF**

**VERSUS**

**JAMES OBEGI ..... RESPONDENT**

**RULING**

This ruling is made further to this court's earlier ruling dated 23<sup>rd</sup> July, 2010 wherein the genesis of this matter was set out.

In brief, on 3<sup>rd</sup> June, 2010, the defendant was taken to court under arrest. He had failed to comply with a court order issued by Makhandia, J. On that day he was together with his sons, **Richard Obegi, Mwangi Obegi** and **George Kariuki Obegi**. Makhandia, J., found the defendant guilty of contempt of court and sentenced him to four months' imprisonment. The judge further ordered that a house that had been put up unlawfully on a road of access contrary to a court order be demolished. It was to be demolished by the defendant's son, George Kariuki Obegi, who had put it up on the defendant's instructions.

The house was not demolished. The defendant's sons instead dug up holes and completely cultivated and destroyed the road of access leading to the plaintiff's parcel of land. They also threatened to visit physical violence upon the plaintiff. The plaintiff filed an application seeking committal to civil jail of the defendant's sons since they had openly defied court orders which were made in their presence and which they were fully aware of. The application was brought under **section 3A** of the **Civil Procedure Act** as well as **section 63 (e)**, although the latter was wrongly cited as **order 63 (e)**. The defendant's sons urged Makhandia, J. to disqualify himself from hearing the application which he did.

In their statement of defence made by way of an affidavit sworn by **Richard Obegi** for and on behalf of himself and his brothers, the defendant's sons stated that they had not been joined as defendants in these proceedings and so being strangers, the orders sought could not be issued against them. He further stated that they had not been personally served with any court order with a penal notice indorsed thereon. He further stated that their father had directed **George Kariuki Obegi** to put up the temporary structure on the road of access, which they alleged was their father's land. In short, they implied that they were not ready to demolish the house as earlier ordered by Makhandia, J. because they verily believed that there existed no road of access and the orders restraining the defendant from interfering with the road of access ought not to have been made in the first place.

Mr. Moracha advocate who appeared for the cited persons relied entirely on the contents of the aforesaid affidavit and urged the court to dismiss the application.

Mr. Obure for the plaintiff submitted that the defendant's sons, who were in court when the aforesaid order was made, had refused to purge the contempt by demolishing the house as ordered. He urged the court to punish them accordingly.

**HALSBURY'S LAWS OF ENGLAND**, 4<sup>th</sup> edition, volume 9, paragraph 65 states as follows:

**“Where an order requires a person to abstain from doing an act, it may be enforced, notwithstanding that service of a duly indorsed copy of the order has not been served, if the court is satisfied that, pending such service, the person against whom enforcement is sought has had notice of the order either by being present when the order was made or by being notified of the terms of the order, whether by telephone, telegram or otherwise.”**

The defendant's sons are not parties in this dispute but were no doubt present in court when their father

was brought to court under arrest. They clearly heard and understood the orders that were made by Makhandia, J. No appeal has been preferred against the said orders. The defendant and his sons are therefore under an obligation to obey the orders. The said sons of the defendant not only refused and/or failed to purge the contempt that had already been committed but also committed further acts of utter contempt by digging up holes and completely cultivating the access road. Their only defence is that they are not parties to this suit and the place where they have cultivated and put up the temporary house does not belong to the plaintiff but instead is their father's land. The District Surveyor had filed a report dated 21<sup>st</sup> April, 2010 that established that there is a road of access leading to the plaintiff's house that had been dug up. In view of that report, the court made an order of a temporary injunction restraining the defendant, his servants, employees and/or agents from closing, fencing and/or in any other manner interfering with the road of access pending hearing and determination of the suit.

In **HADKINSON –VS- HADKINSON** [1952] ALL ER 567 at page 569, Romer, LJ. held as follows:

**“It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made against by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void.”**

It is therefore unacceptable for the defendant's sons to come to this court and allege that the order that was made with regard to the road of access was not proper and were therefore at liberty to disregard the same. If they were dissatisfied with the order, they ought to have appealed against the same and/or made an application for its stay. That was not done.

In **SHAH & ANOTHER –VS- SHAH**[1989] KLR 220, Simpson, J. (as he then was), quoted the words of Lord Diplock in **A.G. –VS- TIMES NEWSPAPERS** [1973] 3 ALL ER 54 at Page 71 where the learned judge delivered himself thus:-

**“In any civilized society it is a function of government to maintain courts of law which its citizens can have access for the impartial decision of disputes as to their legal rights and obligations towards one another individually and towards the state as representing society as a whole. The provisions of such a system for the administration of justice by courts of law and the maintenance of public confidence in it are essential if citizens are to live together in peaceful association with one another. “Contempt of court” is a genuine term description of conduct in relation to particular proceedings in a court of law which tends to undermine that system and to inhibit citizens from availing themselves of it for the settlement of their disputes. Contempt of court may thus take many forms.”**

Disobedience of court orders with impunity is a dangerous practice that encourages break down of the rule of law and has to be discouraged by the court by punishing those who deliberately choose to disregard court orders.

I find Richard Obegi, Mwangi Obegi and George Kariuki Obegi guilty of contempt of court. I sentence each one of them to imprisonment for a term of six months. I make no order as to costs.

**DATED, SIGNED AND DELIVERED AT KISII THIS 28<sup>TH</sup> DAY OF JULY, 2010.**

**D. MUSINGA**

**JUDGE.**

**28/7/2010**

Before D. Musinga, J.

Mobisa – cc

Mr. Obure for the plaintiff

Mr. Moracha for the Defendant's sons

Richard Obegi )  
George Kariuki Obegi ) present

**Court:** Ruling delivered in open court on 28<sup>th</sup> July, 2010.

**D. MUSINGA**

**JUDGE.**

**Mr. Obure:** I pray for a warrant of arrest against Mwangi Obegi who was not in court. Same to be executed by the O.C.S. Kisii Police Station.

**D. MUSINGA**

**JUDGE.**

**COURT:** Orders as prayed.

**D. MUSINGA**

**JUDGE.**