



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 199 of 2007

RESTVILLA LIMITED.....PLAINTIFF

VERSUS

KENYA POWER & LIGHTING CO. LTD.....DEFENDANT

RULING

At the centre of these proceedings are two parcels of land, titles No.LR Nairobi/Block 37/167 and LR. No.Nairobi/Block 37/168.

On 28th February, 2008 Aganyanya J.A made an order restraining the defendant by way injunction from further disturbing or interfering with the plaintiff's quiet and peaceful occupation of the said suit premises pending hearing and determination of the suit.

By an application brought under Order XXXIX Rule 1,2,3, and 9 of the Civil Procedure Rules and Sections 1A and 3A of the Civil Procedure Act, the plaintiff brought an application by way of Chamber Summons seeking an order that the Managing Director and or Company Secretary of the defendant be cited for contempt of court and be imprisoned for a term not exceeding 6 months for disobedience of a court order issued by this court as aforesaid.

It was also the plaintiff's prayer that, the officer commanding Parklands Police Station do assist in effecting defendant's compliance with the said order. The reasons advanced for seeking the said orders are that the defendant has disobeyed and continues to disobey the said orders and commenced construction at the premises. The said order is still valid and has not been discharged, set aside or stayed by any court.

The defendant is said to have been served with the court order and is aware of the terms and that it's actions are eroding the dignity and authority of this court and it is in the interest of justice that, the defendant be punished for the disobedience of the court order. The application is opposed by the defendant who filed a replying affidavit through its legal officer.

As a general rule, no order of court requiring a person to do or abstain from doing any act may be enforced unless a copy of the order has been served personally on the person required to do or abstain from doing the act in person. The copy of the order served 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. *See Civil Appeal No.36 of 1989 Jacob Zedikia Ochino and another – vs – George A Okembo and others.*

In *Civil Appeal No.95 of 1988 Mwangi Wangonde – vs – Nairobi City Commission* the Court of Appeal stated as follows;

“This requirement is important, because the court will only punish as contempt a breach of injunction if satisfied that the terms of 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 doubts”

See also HCCC No.450 of 1995 Isaac J. Wanjohi and another – vs – Rosaline Macharia.

The order at the centre of these proceedings shows that it was date-stamped by the defendant company on 7th August, 2008 which stamp reads Assistant Manager Legal Services. The Penal Notice was also dated-stamped on the same day. The said stamp is not signed or endorsed. The person sought to be committed or cited in this application is the Managing Director and or Company Secretary of the defendant.

Service has been denied. It is imperative to know that an order as that which is sought in this matter shall lead to the deprivation of freedom of the party sought to be cited. It has not been demonstrated that the two officers of the defendant were personally served and that they breached the said order.

With respect therefore, the application has not met the standards required in such applications. Accordingly, the same is hereby dismissed with costs to the defendant.

Orders accordingly.

Dated, signed and delivered at Nairobi this 28th day of September, 2010.

A. MBOGHOLI MSAGHA
JUDGE