

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

CIVIL CASE 333 OF 2007

JOHN GITHINJI alias UTIA.....PLAINTIFF

VERSUS

JULIUS KARAYA GACHAGWA.....DEFENDANT

RULING

By way of this Chamber Summons brought under Order XLI Rule 4 (1) and 6 of the Civil Procedure Rules Rule 3 (2) of the High Court Practice and Procedure Rules and Sections 63 (e) and 3A of the Civil Procedure Act seeks orders of stay of the lower court proceedings in RMCC No. 14226 of 2006 (Milimani) pending the hearing and determination of this appeal. The application is based on the ground that the applicant is threatened with civil jail for alleged contempt of court. The application is also supported by an affidavit sworn by the applicant in which he avers that the order the subject matter of the contempt proceedings was issued restraining the applicant from entering, remaining or trespassing on plot No. CI-KOMAROK BRIDGE JUA KALI residential cum commercial plots DANDORA PHASE 1 while his plot is No. CI- KARIOBANGI SOUTH JUA KALI (SECTOR B).

The application is opposed by the respondent on the ground that the applicant is actually occupying the respondent's plot being Plot No. CI KOMOROK BRIDGE JUA KALI.

There was an order of the court restraining the applicant from trespassing on the suit premises the subject matter of contempt proceedings in the lower court. An order made by a court of unlimited jurisdiction must be obeyed unless and until it has been set aside or discharged by the court.

Disregard of an order of the court is a matter of sufficient gravity whatever the order may be. It is plain and unqualified obligation of every person against or in respect of whom an order is made by the court of competent jurisdiction to obey it unless and until that order is discharged even if the person affected by the order believes it to be irregular or void.

But it is conceded by both parties that the two plots are distinct and far apart from the other and this is confirmed by the City Council of Nairobi the allocating authority. The court order was directed to Plot No. CI Komorok Bridge Jua Kali while the applicant is in occupation of plot No CI Kariobangi South Jua Kali (Section B).

That being the position it can't be said that the applicant has disobeyed the court order.

Having come to that conclusion the contempt proceedings lodged against the applicant in the lower court are not tenable. In the result the appellant's application is allowed in terms of prayer 3 of the Chamber Summons dated 29th day of February 2008.

Dated at Nairobi this 21st day of November 2007.

J. L. A. OSIEMO

JUDGE