



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Civil Suit 242 of 2004**

**WILLIAM KIMUTAI SIGEI.....PLAINTIFF**

**VERSUS**

**JAMES KIPKORIR ARAP MEREBU.....IST DEFENDANT**

**KALENJIN ENTERPRISES.....2ND DEFENDANT**

**RULING**

The applicant filed an application dated 12th May, 2005 seeking three substantive orders;

- 1. an order for attachment of the defendants' property to enforce their compliance with a Court order issued on 15th September, 2004 and sale of the same to defray the loss or damage resulting from their disobedience.*
- 2. detention of the defendants in prison for a period of six (6) months for disobedience of the said Court order.*
- 3. that the beams held at Kuresoi Police Station be ordered to remain there until the hearing and determination of this suit and/or otherwise as directed by this Court.*

In the supporting affidavit *to the said application*, the plaintiff deposed that on 15th September, 2004 he obtained Court orders restraining the defendants from cutting trees in the suit premises or carrying on any other activities thereon which would amount to destruction of the suit premises. He further stated that he served the said order upon the defendants but they disobeyed the same and continued to cut trees thereon and in particular, between 14th and 18th March, 2005 the first defendant cut trees and sawed them into beams whereupon the Plaintiff went to Kuresoi Police Station and reported the matter to officer commanding the station.

The applicant further stated that on 23rd March, 2005 the first defendant went to the suit premises with two trailers and loaded them with the beams. The plaintiff reported the matter again to the Police at Kuresoi Police Station and the first defendant was arrested and the trailers and the beams were detained at the Police Station and the beams were still there at the time the application was filed.

In his replying affidavit, the first defendant referred to the Court order that was issued on 15th September, 2004. The relevant parts thereof read as follows;-

*“1. **THAT** the application dated 26th August, 2004 be and is hereby listed down for hearing on 11th October, 2004.*

2. ***THAT*** the defendants are hereby ordered to file and Serve their replying papers within the next fourteen days from the date hereof.

3. ***THAT*** in the meantime there should be no cutting of tree In the suit premises or carrying on of any other activity which may amount to destruction of the suit premises but if any livestock is being grazed thereon, that may continue.”

The first defendant deposed that he was advised by his advocate that the injunction order aforesaid was operative only between the date of its issuance to 11th October, 2004 when the application was to be heard but on that day the matter was not heard and neither were the orders extended. When the application next came up in Court on 13th October, 2004, the orders were also not extended.

The first defendant stated that he was advised by his advocate, Mr Thuo, that he could collect the beams that had been felled and were lying on the round but was advised against cutting down any tree thereon. He stated that he only facilitated the buyer of the beams to carry them from the suit land and he tendered an unreserved apology in the event that his so doing was construed as contemptuous to the said Court order. I have carefully considered the submissions that were made by the advocates for the respective parties herein.

It is not in dispute that the respondent was duly served with the court order that was issued by this court on 15th September, 2004.

The respondent stated that he did not cut any trees on the suit land from the date when he was served with the said Court order but he admitted having carried some beams which had been cut and sawed prior to the issuance and service of the order. There was no proof that the respondent engaged in cutting of trees on the suit land from the time when he was served with the said order. Contempt of Court is a serious offence and once proved, may result to very drastic consequences.

The standard of proof required in contempt proceedings is higher than proof on a balance of probabilities and almost, but not exactly beyond reasonable doubt. The guilt of an alleged contemnor has to be proved with such strictness of proof as is consistent with the gravity of the charge, see **MUTITIKA V BAHARINI FARM LTD 1985 KLR 227.**

I am therefore unable to hold that the respondent is guilty of contempt of court as alleged.

With regard to the beams that are held at Kuresoi Police Station, I direct that they be sold to the original buyer at the best price possible but in the event that he is unable or unwilling to purchase the same within 14 days from the date hereof, they may be sold to any other interested person. The sale proceeds should be deposited in Court pending the hearing and determination of this suit. Each party shall bear its own costs.

**DATED, SIGNED and DELIVERED at Nakuru this 15th day of November,2005.**

**D. MUSINGA**

**JUDGE**

**15/11/2005**