



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC CASE NO. 31 OF 2013

ALFRED BUORE NG'ONGA.....PLAINTIFF

VERSUS

LAKE BASIN DEVELOPMENT AUTHORITY.....DEFENDANT

RULING

The application before court is dated 6/11/2020. It seeks orders that the court be pleased to grant leave to the applicant to cite the Managing Director of Lake Basin Development Authority – Dr. Raymond V. O. Omollo for contempt of court. The Managing Director of Lake Basin Development Authority – Dr. Raymond V. O. Omollo herein should show cause why he should not be jailed for six (6) months. That this honourable court absolutely without prejudice to the forgoing and strictly to the alternative order that Japheth Angila Atinga the 4th Respondent be fined an amount of Kshs. 1,000,000/-.

The application is based on grounds that that the Respondent is disobeying court orders at will. That the Respondent must be punished for contempt of court and that courts orders are meant to be obeyed.

That the Respondent has stated clearly that they are not afraid of the court orders and have termed the same as mere papers, a sham, a hogwash and a waste of time that could not warrant them whatsoever to have a second bite of the cherry.

That the Respondent is merely head strong to champion their clandestine motives despite the existing court orders.

The application is supported by the affidavit of Alfred Buore Ng'ong'a who states that the respondent laid an illegal claim on the suit land. He made an application for a temporary order of injunction restraining the defendant from remaining in, occupying continuing to occupy or doing any act on land parcel known as Kisumu Tonda/58 pending the hearing of the suit. The order was served upon defendant.

The applicant laments that even upon service of the said order to the Respondent, they are still fencing the parcel with intention of putting up a building on the suit parcel in total blatant disregard that the plaintiff had obtained a court order preventing them from carrying on any activities on the parcel.

The Defendant/Respondent's actions not only amounts to impunity but it is clear indication of contempt of the court order and the same must be punished to sensitize the individual and the public at large. That court orders are not mere papers and the same must be respected and adhered to.

The Plaintiff had been advised by his advocate on record the advice he verily believe to be true that court orders must be obeyed and the court does not issue its orders in vain.

That unless the contempt of court orders proceeding are brought against the Managing Director of Lake Basin Development Authority- DR Raymond V. O. Omollo then they will continue flagrantly disobeying the said court orders.

The Plaintiff is now desirous that the Managing Director of Lake Basin Development Authority – DR Raymond V. O. Omollo be charged with contempt of court orders and should be arrested and should also show cause why he should not be jailed for six months for disobeying the said court orders.

That he is now desirous that the Managing Director of Lake Basin Development Authority – Dr Raymond V. O. Omollo should show cause why he should not be jailed for six months.

In the replying affidavit the respondent states that the temporary order of injunction lapsed when the suit was dismissed on 4/10/2017. The

orders were not extended, conversely, the orders of injunction were issued on 23/10/2013 and by dint to order 40 the orders lapsed after the expiry of 12 months.

The respondent states that the structures were put in place when the injunction lapsed during the period when the suit stood dismissed between 4/10/2017 and 31/10/2019. The defendant has been using the land from 1982 to date. The Managing Director Lake Basin Development Authority has never been served with any order reinstating the temporary order of injunction.

There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that: -

(a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;

(b) the defendant had knowledge of or proper notice of the terms of the order;

(c) the defendant has acted in breach of the terms of the order; and

(d) the defendant's conduct was deliberate.

I have considered the application, the supporting affidavit and replying affidavit and rival submissions and do find that the plaintiff is seeking to enforce orders that were issued on 23/10/2013.

Order 40 Rule 6 provides that where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the court orders otherwise. The orders lapsed 12 months thus on 23/10/2014.

Moreover, the court finds that the plaintiff did not apply to reinstate the temporary injunction issued which lapsed when the suit was dismissed on 4/10/2017. The plaintiff is relying on orders that lapsed.

I do find that the application is not merited. The same is dismissed with costs.

DATED AT KISUMU THIS 18th DAY OF MARCH, 2021

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2019.

ANTONY OMBWAYO

JUDGE