



REPUBLIC OF KENYA



Asembo v Ushindi PAG Assembly Vihiga & 2 others (Environment & Land Case 06 of 2023) [2024] KEELC 6621 (KLR) (9 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6621 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT & LAND CASE 06 OF 2023**

E ASATI, J

OCTOBER 9, 2024

BETWEEN

DAVIES OBANYI ASEMBO PLAINTIFF

AND

USHINDI PAG ASSEMBLY VIHIGA 1ST DEFENDANT

LAND REGISTRAR VIHIGA 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. The application before court for determination is the Notice of Motion dated 30th August 2024 expressed to be brought pursuant to the provisions of sections 1A,1B, 63(e) and 3A of the Civil Procedure Act Cap 21 Laws of Kenya section 5 of the Judicature Act Cap 8 and Order 51 of the Civil Procedure Rules 2010.
2. The application seeks that the court issues orders of Committal to Civil Jail against the 1st Respondent and/or its agents or employees for contempt of court having allegedly deliberately disobeyed a court order issued on 17th January 2024. The application was supported by the contents of the Supporting Affidavit of Davis Obbayi Asembo the applicant.
The Applicant was opposed.
3. The applicant file written submissions dated 6th September 2024 while the Respondent relied on the contents of the Replying Affidavit. I have read and considered the application, Supporting Affidavit and annextures and the written submissions filed. One of the annextures to the Supporting Affidavit was a court order dated 17th January 2024 and marked annexture DOA-2. A reading of the same shows that it was an interim order issued exparte pending hearing and determination of an application dated 16th January 2024. The court record shows that the said application was heard and determined vide



ruling delivered on 11th April 2024. A reading of the said ruling shows that the application dated 16th January 2024 was dismissed and costs ordered to abide the main suit.

4. Interim orders are conditional orders that elapse when the condition is fulfilled. The interim order dated 17/1/2024 elapsed on 11/4/2024 when the parent application was dismissed.
5. The grounds upon which contempt proceedings will issue include the existence of a valid court order which has been sufficiently brought to the attention of the contemnors but which the contemnors have wilfully disobeyed.
6. In the present case there was no valid order that was capable of being disobeyed by the proposed contemnor in the manner contended by the applicant.
7. I find that the application is misconceived, and hereby is dismiss it. Costs to the 1st Respondent.

Orders accordingly.

RULING DATED AND SIGNED AT VIHIGA, DELIVERED VIRTUALLY THIS 9TH DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Ajevi- Court Assistant.

Were h/b for Wachakana for the Plaintiff/Applicant

Karani for the 1st Defendant/Respondent.

No appearance for the 2nd & 3rd Defendants/Respondents

