



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC NO. 36 OF 2021

JAMES MUSA TAPOYO.....PLAINTIFF

VERSUS

SAMSON TAPOYO.....1ST DEFENDANT

FREDRICK PKEMOI ANDIEMA.....2ND DEFENDANT

RULING

(On Contempt of Court)

1. Before me is the second defendant, one **Fredrick Pkemoi Andiemu Pkrerker**, whose Identity Card Number is **20126527**. He was brought before this Honourable Court under a warrant of arrest issued on **24/2/2022**. The warrants were issued following numerous allegations that he had defied the Court Orders given on **23/07/201** and **23/01/222**.

2. The genesis of the orders is that the plaintiff herein brought this suit against the alleged contemnor and the first defendant on **18/6/2021** vide a Complaint dated **17/6/2021** and filed contemporaneously with a Notice of Motion dated the same day. The motion was brought under certificate of urgency. In the Notice of Motion the plaintiff sought, among others, orders that pending the hearing of the application *inter-partes* a temporary injunction issues against the two defendants and their servants, agents, employees and/or other persons acting on their behalf from selling, leasing, transferring, constructing on, trespassing, occupying, raring animals on and/or in any other way dealing with land parcel No. **LR West Pokot/Keringe 'A'/3943**. A final order was sought also. The record shows that on **6/7/2021** my brother Judge determined the application and granted the final prayer sought upon the *inter-partes* hearing of the application namely, the injunction in terms of the prayer I have reproduced above save that it was to the effect that it would pend the determination of the main suit.

3. An order was extracted to that effect. It was served on the alleged contemnor, a fact he admits on oath, upon being presented to court under warrant of arrest. The contemnor states on oath that upon receiving the order, he came to the Court registry to confirm the truth about this matter. He states further that he stopped the construction that was about to commence at the time the order was served first.

4. It is the contemnor's statement that some time early this year he commenced the construction on the parcel of land in question. It would appear that it was this "second" action of the 2nd defendant that made the plaintiff to once again move this Court on **14/1/2022** and request that the Officer Commanding Station (OCS), Kapenguria, does enforce the orders issued on **23/1/2022**. The said order was the one extracted pursuant to the ruling of my brother as delivered on **6/7/2021** as I stated earlier.

5. On the date the Court was moved for the second time over the said order, it directed that a notice to show cause be issued to the OCS Kapenguria to attend court and show cause why the said officer should not enforce the order. On the date of hearing the notice to show cause, the explanation given to court by counsel was that there was defiance on the ground and that unless warrant of arrest were issue he (OCS) could not be able to enforce the order. The court then summoned both the 2nd defendant or contemnor herein and his advocate to attend court and explain why it was proving difficult to comply with court orders. On **24/2/2022** when the matter was mentioned, neither the advocate nor the contemnor attended court. That was when the warrants in question herein were issued, and the alleged contemnor apprehended.

6. Upon being arrested and brought to court, the contemnor was asked to state on oath if he was aware of the orders of this Court and if indeed he was carrying out the construction in issue. He admitted that he was served with the orders twice, the first time in **July, 2021**, on a date he could not recall and the second one, in **January** this year. He then stated that despite that he had continued with the construction. He stated that he had a lawyer representing him.

7. I have perused the orders issued by this court which were allegedly breached. They were clear and had a penal notice at the bottom

thereof. The orders were for injunction in terms of the prayer that I reproduced herein above.

8. I have also noted that the 2nd defendant does not deny being served with the orders. He also does not deny being the one who has been carrying out the construction on the ground, with his servants and or agents. From the totality of this, the Court finds that the 2nd defendant's conduct herein amounts to nothing but sheer contempt of the orders of the court.

9. Contempt of court is a serious offence which goes towards undermining the dignity of both the court and the authority that establishes it. Actually it is conduct that borders on disrespect of the rule of law and leans towards anarchy. Without the court's authority being respected there cannot be proper social fabric. Since courts are the guardians of justice and 'watchers' against both excessive and unbraided use of power, which often tends to be exercised by those in authority, especially the executive and legislature in democracies which are either failing, young or unbridled, they ought to be given due respect. It is only through courts that decisions are made which did not lean towards certain interests. That is why judicial officers ought to be men and women beyond reproach and without any political, social, and other inclinations. This is borne of the very initial sense that each one of us (judicial officers) ought to exercise that judicial authority as was first established of God before whom all men and women, young and old shall appear to give account of all that they did while here on earth (2 Corinthians 5:10 for those who believe in the Holy Bible). That should be linked with (Ecclesiastes 12:13-14). For these reasons, the respect that ought to be accorded to the orders and directions of the Courts ought to be of the greatest magnitude. That does not imply that courts be treated as and be equated to God or gods. However, the orders that they issue are clothed with total commands put forth softly and soberly, and as long as the said orders have neither been changed nor declared nullities or be illegalities or stayed, they ought to be obeyed. In order to make the orders, courts issue to be effective, such orders ought to 'bite' as Kimaru J, once stated, and cited by Odunga J below.

10. In the case of *Miguna Miguna "Fred Matiang", Cabinet Secretary Ministry of Interior and Coordination of National Government of 8 Others [2018] eKLR* Justice Odunga stated as follows:

"This court, like any other court of law, ought not to make orders in vain. It must make sure that its orders 'bite' as Kimaru K said. It must not only make effective orders but orders whose execution can be carried out swiftly and efficiently and orders which it can supervise. It must not issue orders which from the circumstances of the case, there is high likelihood that they will not be implemented whether rightly or not."

11. What the Lordship was emphasizing then in the holding was that court orders are not made in vain. They are made such that they are obeyed. As such disobedience of orders of the court, be it from those in high office or those without any office at all ought to be frowned at and abhorred by all means. In actual sense, when a party is in contempt of court he/she ought to be denied audience until he/she purges the contempt. This is because in the first place the said party has, by his conduct, demonstrated that he does not regard the authority of the court. Therefore, ought he be heard by the same authority that he does not regard? No. To hear such a party would be akin to placing him/her in a position higher than the said authority he is before. In my humble view, once a party shows contempt to authority, the authority should not give him audience until he shows respect to that authority. In that regard once a party is in contempt of court he/she should not be given audience by the court except in so far as he is only permitted to demonstrate the impracticality of obedience of the said court order. In such circumstances the burden lies on him, and it must a very heavy burden indeed, for him to discharge that the order is incapable of execution. Otherwise to keep him given audience would be emboldening him and showing a bad example to society in regard to deferral to judicial authority. That should be the last thing courts ought to do.

12. For the above reasons, I find the contemnor herein worth of denial of audience save to the extent that he will only be granted the chance to mitigate his case. Thus, I find the contemnor guilty of the offence of contempt of court and convict him accordingly.

DATED, SIGNED AND DELIVERED AT KITALE ON THIS 3RD DAY OF MARCH, 2022.

DR. IUR FRED NYAGAKA

JUDGE, ELC, KITALE.