



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

CASE No. 300 OF 2015

SAMUEL CHEGE KAMUNGE

(Suing as the personal Representative of the Estate of

Ruth Wanjiru Kamunge (Deceased).....PLAINTIFF

VERSUS

JOSPHAT CHEGE MUGURU t/a

Josgemu Surveyors Enterprises.....1ST DEFENDANT

MARY NJERI MUGO.....2ND DEFENDANT

JAMES WACHIURI WAIGWA.....3RD DEFENDANT

PAUL MWAURA KAMAU.....4TH DEFENDANT

PURITY WANJIRU.....5TH DEFENDANT

DAVIES KIIRU NDUNGU.....6TH DEFENDANT

JOSGEMU ENTERPRISES LTD.....7TH DEFENDANT

THE LAND REGISTRAR NAIVASHA.....8TH DEFENDANT

THE HON. ATTORNEY GENERAL.....9TH DEFENDANT

IN THE MATTER OF CONTEMPT IN THE FACE OF THE COURT

IN THE MATTER OF KAMAU NYORO ISAAC

RULING

1. Earlier today, in the course of the court's normal business, when ELC Case No. 300 of 2015 was called out, counsel for the plaintiff, as well as counsels for 2nd defendant and 6th defendant introduced themselves as appearing for the respective parties. At that point, one Kamau Nyoro Isaac introduced himself as Mr. Kamau and stated that he was appearing for the 3rd, 4th and 5th defendants. Initially, he indicated that he was ready to proceed, this despite the fact that it emerged that the said defendants had not filed any statement of defence or any of the compliance documents as required by the Civil Procedure Rules. He then changed his mind and sought an adjournment without offering any reasons for the adjournment.

2. Besides the application for adjournment made by Mr. Kamau, there was another application for adjournment by counsel for the 6th defendant. The court considered both applications for adjournment and made a ruling on them.

3. Upon delivery of the ruling, Mr. Opar rose and asked to address the court as an officer of the court and as an official of the local bar association. He brought it to the attention of the court that he and other counsel in court harboured doubt as to whether Mr. Kamau had a valid practice status.

4. Mr. Kamau responded that he had a valid practicing certificate and that he could produce it if given a chance. On being questioned by the court he insisted that he had a practicing certificate. He later changed his mind and stated that he is in fact not an advocate but a process server working for a law firm known as G. M. Njuguna & Company Advocates in Naivasha.

5. At that point Mr. Opar submitted that Mr Kamau was in contempt of court. He urged the court to take action. Learned Counsel for the plaintiff Mrs. Muhoho, learned counsel for the 2nd defendant Mr. Karanja and learned counsel for the 6th defendant Mr Mbiyu all deplored Mr Kamau's conduct and urged the court to take appropriate action.

6. Mr. Kamau's action holding himself out as an advocate and going ahead to address the court brings into sharp focus the whole question not only of the dignity of the proceedings before the court and the court itself, it also exposes hapless litigants to risk of incompetent and unprofessional representation. Needless to state, justice is at stake in such circumstances.

7. For good reasons, the law regulates the legal profession just like other professions. To practice as an advocate, one must fit within the definition given at **Section 2** of the **Advocates Act** which provides:

“advocate” means any person whose name is duly entered upon the Roll of Advocates or upon the Roll of Advocates having the rank of Senior Counsel and, for the purposes of Part IX, includes any person mentioned in section 10

8. By his own admission, Mr Kamau is not an advocate and his name has not been entered upon the Roll of Advocates. I have been urged by Mr Opar on behalf of the local bar association as well as by other counsel in this matter to find Mr Kamau to be in contempt of court.

9. Contempt of Court in the context of this case is defined at **Section 4(2)** of the **Contempt of Court Act, 2016** as follows:

In any case not relating to civil or criminal proceedings as contemplated under subsection (1), an act that is wilfully committed to interfere, obstruct or interrupt the due process of the administration of justice in relation to any court, or to lower the authority of a court, or to scandalize a judge, judicial officer in relation to any proceedings before the court, on any other manner constitutes contempt of court.

10. Mr Kamau deliberately misrepresented to the court that he is an advocate and that he has capacity to appear for the 3rd, 4th and 5th defendants in this case. The court's business was disrupted as his credentials were called to question. Even then, he did not readily admit to being an unqualified person but instead blatantly misled the court. I have no doubt in my mind that his conduct wilfully interfered with, obstructed and interrupted the due process of the administration of justice in the court and in this matter. Such conduct is contempt in the face of the court.

11. Lord Denning, M.R, defined contempt in the face of a court in **Balogh v. St Albans Crown Court [1975] 1QB 73**, as follows:

Its meaning is, I think, to be ascertained from the practice of the judges over the centuries. It was never confined to conduct which a judge saw with his own eyes. It covered all contempts for which a judge of his own motion could punish a man on the spot. So “contempt in the face of the court” is the same thing as “contempt which the court can punish of its own motion”. It really means “contempt in the cognisance of the court.

12. This court has jurisdiction pursuant to **Section 5** of the **Contempt of Court Act, 2016** to punish for contempt in the face of the court. In view of the foregoing, I find and hold that Mr Kamau Nyoro Isaac is guilty of contempt in the face of the court contrary to **Section 27(k)** of the **Contempt of Court Act, 2016**. I accordingly convict him and sentence him to pay a fine of Twenty Thousand Shillings and in default imprisonment for a term of one month.

13. I further order that the Deputy Registrar of this court forwards a copy of this ruling to the Process Servers Committee for the said committee to take any appropriate action against Kamau Nyoro Isaac, if he is indeed a licensed process server.

Dated, signed and delivered in open court at Nakuru this 3rd day of October 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Kamau Nyoro Isaac (contemnor)

No appearance for the plaintiff

No appearance for the defendants

Mr Ochang (President, Rift Valley Law Society)

Mr Opar (Secretary, Rift Valley Law Society)

Mr Kipkoech Ngetich (Convenor, Ethics and Practice Committee, Law Society of Kenya)

Court Assistants: Gichaba & Lotkomoi