



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC CASE NO. 43 OF 2007

JOHN KUNDU KHISA.....PLAINTIFF

VERSUS

KENNEDY KHISA KUNDU.....DEFENDANT

RULING

The Application

1. The application dated **19/3/2021** and filed in court on **24/3/2021**, has been bought under **Sections 63(e)** of the **Civil Procedure Act**, **Order 40 Rule 3(1) & (3) and (4)** and **Order 51 Rule 1** of the **Civil Procedure Rules**. The plaintiff seeks the following orders:-

(1) ...spent

(2) That this honourable court be pleased to find respondent/defendant is guilty of the contempt of court order and commit the respondent/defendant to jail in prison for a period to be stated by the court for disobeying the court order dated 11/2/2009 and issued on 9/5/2017 and the same order reissued on 30/7/2018 from the said plot No. 50 located at Sikhendu Market within Trans Nzoia County.

(3) That the OCPD Kitale Police Station to effect this order.

(4) Costs of this application be provided.

2. The application is supported by the affidavit sworn on **19/3/2021** by the plaintiff. The application is premised on the grounds that the respondent has trespassed on the applicant premises on plot **No. 50 at Sikhendu Market**; that the respondent is in contempt of a court order; that on **9/5/2016** this court issued an eviction order that was executed by the OCPD at Sikhendu police post with other police officers on **13/12/2017** evicted the defendant/respondent and on the same day the defendant returned his household goods back to the same premises; that on the **30/7/2018**, the court reissued an eviction order which was effected by the OCS Kitale police station on **5/9/2019** but the defendant, disobeying the said order, broke all the padlocks locking the said premises and returned all his household back to the said premises and took possession and control of the said premises again; that the defendant is committed to dispose of the said premises and that the applicant stands to suffer irreparable loss. It is stated that the applicant is the lawful owner of the premises on plot **No. 50** at Sikhendu Market and if this order is not granted then he stands to suffer loss and damages.

3. The application is not opposed. Though there is an affidavit of service dated **5/4/2021**, the defendant has not filed any response to the motion. However I must consider this application on its merits as it is likely to impact on the liberty of a citizen.

4. In a ruling dated **25/4/2018** this court declined to punish the defendant for the offence of contempt of court on the basis that the proper execution process had not issued. The court stated that a notice to the defendant is advisable before execution yet no notice to show cause had been issued against the defendant.

5. In the current application the situation is quite different; the applicant has demonstrated that he went beyond issuing a notice to show cause; on two occasions he caused the defendant to be evicted as required by law but the defendant kept trespassing on the premises after eviction.

6. Though served the defendant has not denied these allegations. the respondent is aware that the court has already issued a mandatory injunction against him compelling him and all his servants, agents or assigns to vacate the suit premises and remove all their belongings therefrom. Eviction orders have already issued after the defendant defied the mandatory injunction order. Returning to the suit premises is a

mark of defiance.

7. I find that from the contents of the file record it is quite evident that the defendant is aware of the mandatory injunction order and has even attempted to have it reviewed albeit unsuccessfully, and also that the insistence on returning to the suit premises is a deliberate disobedience of the mandatory injunction order.

8. I therefore find the application dated **19/3/2021** has merit. I find that the defendant is guilty of the offence of contempt of court. however I find that the sanctions for the offence he has committed being serious in nature, he is entitled to mitigation for his conduct before sentencing.

9. I therefore order that the defendant shall present himself in court for mitigation and sentencing on **12/5/2021** at **9.00 am** without fail. This matter shall be brought up in court on that day.

It is so ordered.

DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 5TH DAY OF MAY, 2021.

MWANGI NJOROGI

JUDGE, ELC, KITALE.