



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC. MISCELLANEOUS APPLICATION NO. 27 OF 2019

GUJRAL SANDEEP SINGH RAGHBIR.....APPLICANT

VERSUS

MINISTER FOR PUBLIC WORKS, ROAD & TRANSPORT,

COUNTY GOVERNMENT OF KAJIADO.....1ST RESPONDENT

COUNTY GOVERNMENT OF KAJIADO.....2ND RESPONDENT

IN THE MATTER OF AN APPLICATION ON BEHALF OF GUJRAL

SANDEEP SINGH RAGHBIR AGAINST THE MINISTER FOR PUBLIC

WORKS, ROAD & TRANSPORT COUNTY GOVERNMENT OF

KAJIADO FOR AN ORDER OF COMMITTAL

RULING

What is before Court for determination is the Applicant's Chamber Summons Application dated the 2nd April, 2019 brought pursuant to Section 5(1) of the Judicature Act, Order 52 Rule 2(2) of the Rule of Supreme Court of England 1965 and Section 3A of the Civil Procedure Act. The Applicant seeks the following orders:

1. An order of committal be issued against Alex Leshinka Kilowua, the Minister for Public Works, Road and Transport, Kajiado County, Paul Kipamet Mutuyia, the Member of County Assembly, Kitengela Ward, Kajiado County, Eng. Johnson Opoyi, the Kajiado County Engineer and Silas Senteru, the Contractor to prison for such period as this Honourable Court may deem fit and just in that the Respondent and their agents/ servants have disobeyed the Judgement/Decree made by this Honourable Court on 23rd January, 2018 to wit:-

a. A Permanent injunction restraining the Respondents either by themselves, their agents and or servants from harassing, threatening, intimidating, trespassing upon, demolition and or in any manner whatsoever interfering with the Plaintiff's stores, perimeter wall, restaurant and other structures erected on the property known as title number Noonkopir Trading Centre/195.

The application is premised on the grounds on the face of it and the verifying affidavit of GUJRAL SANDEEP SINGH RAGHBIR as well as Statement and Notice of Application for leave. In the said documents, he confirms that this court issued a judgement dated 23rd January, 2018 which has been disobeyed by and defied by Alex Leshinka Kilowua, the Minister for Public Works, Road and Transport, Kajiado County, Paul Kipamet Mutuyia, the Member of County Assembly, Kitengela Ward, Kajiado County, Eng. Johnson Opoyi, the Kajiado County Engineer and Silas Senteru, the Contractor. He seeks for the said persons to be committed to civil jail for such a period as the Honourable Court deems fit.

The Respondents opposed the application by filing a replying affidavit sworn by FRANCIS SAKUDA, the County Secretary, where he deposes that the application is frivolous, vexatious and an abuse of the court process. He insists the contents of the Chamber Summons Application, Verifying Affidavit, Statement and Notice of Application for leave are fabrications and have abstract claims which are unsupported. Further, the Applicant has made a plethora of wild claims without adducing an iota of evidence to back them. He avers that the application has been made under non – existent provisions of the law. He reiterates that there is no documentary evidence to demonstrate that the Respondents indeed demolished the Applicant's structures, removed beacons and chased away any tenants as alleged.

None of the parties filed submissions to canvass the application.

Analysis and Determination

Upon consideration of the Chamber Summons application dated 2nd April, 2019 including the respective affidavits, Statement and Notice of Leave filed herein, the only issue for determination is whether Alex Leshinka Kilowua, the Minister for Public Works, Road and Transport, Kajiado County, Paul Kipamet Mutuyia, the Member of County Assembly, Kitengela Ward, Kajiado County, Eng. Johnson Opoyi, the Kajiado County Engineer and Silas Senteru, the Contractor should be committed to prison for having disobeyed the Judgement/Decree made by this Honourable Court on 23rd January, 2018.

Section 63 of the Civil Procedure Act stipulates as follows: **‘in order to prevent the ends of justice from being defeated the court may, if it so prescribes; (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and that his property be attached.’**

The Applicant in the instant application and statement contend that the aforementioned persons should be committed to civil jail for defying a court order, which fact is opposed by the Respondents.

Section 109 of the Evidence Act provides that: **‘The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.’**

From a perusal of the instant Chamber Summons application, I note the Applicant has not indicated when the alleged acts were committed or provided proof to demonstrate that the said acts were committed by the aforementioned parties for them to be committed to jail.

Based on the facts as presented while relying on the legal provisions cited above, I find that the Applicant has failed to tender adequate evidence to prove how the four aforementioned persons defied the Judgement/Decree of this court. I opine that it is in the interest of justice for the alleged parties to be granted an opportunity to be heard before an order for their committal to civil jail is granted. It is my considered view that the Applicant’s allegations herein have not met the threshold set in contempt proceedings as envisaged by the law as the standard of proof in the said proceedings is higher than the balance of probabilities and almost beyond reasonable doubt, which position is well articulated in the case of **Africa Management Communication International Limited Vs Joseph Mathenge Mugo & Anor (2013) eKLR.**

In the circumstances, I find the Chamber Summons Application dated the 2nd April, 2019 unmerited and will disallow it.

Costs will be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 28TH DAY OF SEPTEMBER, 2021

CHRISTINE OCHIENG

JUDGE