



SOO v HFO & another; Registrar of Lands Busia (Interested Party) (Matrimonial Cause E002 of 2023) [2024] KEHC 5708 (KLR) (22 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5708 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
MATRIMONIAL CAUSE E002 OF 2023
WM MUSYOKA, J
MAY 22, 2024**

BETWEEN

SOO PLAINTIFF

AND

HFO 1ST DEFENDANT

PWO 2ND DEFENDANT

AND

REGISTRAR OF LANDS BUSIA INTERESTED PARTY

RULING

1. On 15th March 2024, I delivered a ruling wherein I held that a person could only be held liable in contempt of a court order, where proof had been furnished, that he had been made aware of the existence of the order, he is alleged to have disobeyed, by way of having been served with the order.
2. The order in question here was made on 23rd June 2023. The persons who were targeted by the application, to have them committed for contempt of court, denied ever being served with that order, hence their argument that they could not have disobeyed an order that they were unaware of. In the face of that, I directed, in that ruling of 15th March 2024, that the applicant avail the court process server, who allegedly served the order on them, one Moses Kuloba Keya, for cross-examination, on the contents of his affidavit of service of 26th June 2023.
3. At the delivery of the ruling, I appointed 2nd May 2024, as the date when that cross-examination was to happen. On the appointed date, the court process server, Moses Kuloba Were, was availed, and he was cross-examined by Mr. Were, the Advocate for one of the persons said to have disobeyed the order in question. He denied that it was he who served that order, and denied signing the affidavit of service in question, saying that the signature on that affidavit, purported to be his, was false.



4. In the face of that testimony, by the person who was alleged to have had served that order, there cannot be any basis for the alleged service. That then would mean that there would be no foundation, for the Motion, dated 25th September 2023, seeking to initiate contempt proceedings against the respondents herein. That being the case, the said Motion, dated 25th September 2023, is devoid of merit, and I hereby dismiss it, with costs.
5. The last word. I am surprised that an Advocate can present a witness, or any person, for that matter, to the court, for the purpose of giving evidence, when that Advocate has not interviewed that person, or when the Advocate has no idea what that person is going to say in court. It is professional recklessness and incompetence at its worst. It is a cardinal rule of advocacy that you do not present a witness in court, when you have no idea of the nature or kind of evidence that that person is going to give. It is corollary to the advocacy rule that you do not ask a witness a question whose answer you do not know.

DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA ON THIS 22ND DAY OF MAY 2024

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. Ayieko, instructed by Mukongolo & Company, Advocates for the plaintiff.

Mr. Omeri, instructed by Omeri & Associates, Advocates for the 1st defendant.

Mr. Were, instructed by Fwaya Masakhwe Were & Advocates, Advocates for the 2nd defendant.

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