



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC SUIT NO. 356 OF 2017

SAMMY AKIFUMA.....1ST PLAINTIFF

JOYCE AKIFUMA.....2ND PLAINTIFF

-VERSUS-

KAPOSH NJOROGE NAKUMANA.....1ST DEFENDANT

JONATHAN KAPOSH.....2ND DEFENDANT/APPLICANT

NTEENE OLE KAPOSH.....3RD DEFENDANT

KENETH OBIMBO ODHIAMBO.....4TH DEFENANT

RULING

This ruling is on the Notice of Motion dated 18th December, 2020.

The said motion which is by the second Defendant/Applicant seeks two main prayers namely;

(1) That the Court be pleased to grant leave to the Applicant to commence contempt proceedings and cite the Chairman of the National Land Commission and the Chief Executive Officer of Kenya Railways for contempt of Court.

(2) That the same two officers mentioned above be committed to Civil Jail for 6 months for contempt of Court.

The application which is under **Rule 9A** of the **Civil Procedure Rules, Section 5 (1)** of the **Judicature Act, Sections 3 and 3A** of the **Civil Procedure Act** and all other enabling provisions of the law is supported by several grounds which include;

1. That this Court ordered the National Land Commission to release Ksh. 13, 814, 700/= on 21/2/2020.
2. That the said order was extracted and served upon the Commission and Kenya Railways on 24th June, 2020.
3. That the Commission has refused to comply with the order.
4. That the said funds are urgently required for medical treatment for ailing 1st and 3rd defendants.
5. Unless contempt proceedings are filed and contemnors put into civil jail, the impunity will continue.

The application is supported by an affidavit sworn by the applicant dated 18/12/2020 which has two annexures namely a copy of the decree dated 22/8/2019 and the order directing release of funds dated 21st January, 2020.

The application is not opposed and on 14/10/2021, Mr. Mbutia for the Respondent appeared before the Court and asked for time to respond. He was given time until 26th October, 2021 but he did not appear.

The application dated 18th December, 2020 remains unopposed and uncontroverted by the National Land Commission and Kenya Railways.

I have carefully considered the application in its entirety, including the grounds, the affidavit and annexures.

I find the Notice of Motion to be ambiguous because it seeks leave to commence contempt proceedings on the one hand and committal to Civil Jail for 6 months for contempt of Court on the other hand.

Recent jurisprudence from the Court of Appeal in the case of *Shimmers Plaza Limited –versus-National Bank of Kenya Ltd (2015) eKLR* is to the effect that leave to institute proceedings such as this is not necessary and I quote;

“Before we conclude, we would like to state that contrary to the averment by the Respondent herein that the Application is bad in law for lack of leave to institute contempt of Court proceedings, under the new Civil Procedure Rules of England (2012) which as stated earlier still apply in respect of contempt of Court in this country, leave of Court before institution of an application such as this is no longer necessary”.

I need not say any more in this regard.

Secondly, I find that since leave is not necessary, I will proceed to consider the second part of the Notice of Motion which seeks committal of two officers to Civil Jail.

It is not in doubt that the two entities have been served with the Notice of Motion. They have chosen not to oppose it. They have been granted sufficient time to explain any difficulty that they may have in complying with the said order. They have again chosen to keep quiet.

Court Orders are made to be complied with and in the absence of any response, I allow the second prayer and find that Chairman of the National Land Commission and the Chief Executive Officer of Kenya Railways are in contempt of Court for Failure to comply with lawfully issued orders.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20TH DAY OF DECEMBER, 2021.

M.N. GICHERU

JUDGE