



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT OF KENYA AT KISUMU

PETITION NO. 8 OF 2019

JOHANNES AKELO OMBOTO.....1ST PETITIONER

GRADUCE OMBOTO AKELO.....2ND PETITIONER

AND

KENYA RAILWAYS CORPORATION.....1ST RESPONDENT

THE CABINET SECRETARY, MINISTER OF INTERIOR &

COORDINATION OF NATIONAL SECURITY2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

THE KENYA PORTS AUTHORITY.....4TH RESPONDENT

NATIONAL LANDS COMMISSION..... 5TH RESPONDENT

RULING

Johannes Akelo Omboto and Graduce Omboto Akelo have come to this court vide a Notice of Motion dated 7/10/2021 seeking orders that an order of committal be made against the contemnor herein Captain Jotham Odera for such period as this court may deem fit and just and the costs for the application be provided for. The application is based on grounds that **this Honourable Court issued an Order on 18th March, 2021 restraining the Respondents from evicting the Petitioners or taking possession of the suit property until the appeal filed by the 1st Respondent is heard and determined.**

The order of this court was duly served upon the Respondents and their agent one Captain Jotham Odera who was stationed at the Petitioners’ property. The said Captain Jotham Odera despite having knowledge of the order through service upon him and the Respondents has without any colour or justification taken possession of the Petitioners suit property. It is imperative that the contemnor Captain Jotham Odera be punished by this Honourable Court for him to respect due process and honour court orders to avert lawlessness. The Respondent has demonstrated absolute disregard and contempt of the Court Order issued by the Court despite having been served the order.

The application is supported by the affidavit of Johannes Akelo Omboto who states that this Honourable Court issued him with an order dated 18th March, 2021 restraining the Respondents from evicting him or taking possession of the suit property until the appeal filed by the 1st Respondent is heard and determined. The order of this court was duly served upon the Respondents and their agent one Captain Jotham Odera who was stationed at the Petitioners property. That the 1st Respondent’s appeal is still pending and has never been set down for hearing.

That the said Captain Jotham Odera despite having knowledge of the order through service upon him and the Respondents has without any colour or justification taken possession of may suit property. It is imperative that the contemnor Captain Jotham Odera be punished by this Honorable court for him to respect due process and honour court orders to avert lawlessness. That the Respondent has demonstrated absolute disregard and contempt of the Court Order issued by this court despite having been served the order.

I have considered the application, Supporting affidavit and the replying affidavit and do find that on the 18/3/2021, this court made an order of stay of execution of the Judgment dated 5/5/2020 and the decree issued on 8/5/2020 and all other consequential orders arising there from and that status quo on the ground be maintained pending hearing and determination of appeal that the 1st respondents in the petition are restrained from evicting the petitioners and or taking possession of the suit property until the appeal is heard and determined. This order was made in the presence of parties.

I am satisfied that this alleged contemnor was aware of the court order as the same was made in the presence of his advocate, the Attorney General. His taking over of the property was contrary to a court order and therefore I do find that the applicant has satisfied this court that the alleged contemnor is in contempt of court. I do order that the said captain Jotham Odera be committed to prison for a term of 30 days with an option of a fine of Kshs. 200,000/=. For avoidance of doubt, the said court order to be complied with immediately. Warrants of arrest to issue. Costs to the applicant.

DATED AT KISUMU THIS 10th DAY OF DECEMBER, 2021

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2020.

ANTONY OMBWAYO

JUDGE