



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISII

ELC MISC. APPLICATION NO. 21 OF 2019

GEORGE M. ONDARA.....PLAINTIFF

VERSUS

HELLEN NYANGARA OKWANI.....1ST DEFENDANT

CHARLES MACHUKA OKWANI.....2ND DEFENDANT

RULING

INTRODUCTION

1. By a Notice of Motion dated 25th October, 2019, the Plaintiff brought this application pursuant to order 40 Rule 2 (2) of the Civil Procedure Rules and Sections 1, 1A, 3 and 63 of the Civil Procedure Act seeking the following orders:

- i. Spent
- ii. That the Honourable Court be pleased to make a finding that the Respondents are guilty of disregarding and disobeying the orders of this Honourable Court issued on the 6th day of April, 2019.
- iii. That the Honourable Court be pleased to cite and punish by committing the Respondents to prison for a period not exceeding six (6) months and/or have their property seized under sequestration for disobeying the lawful order issued on the 6th day of April, 2019.
- iv. That the Respondents be condemned to pay the costs of this application

2. The application is premised on the grounds stated on the face of the application and the Supporting Affidavit of George M. Ondara, the Applicant herein sworn on the 25th October, 2019. The long and short of it is that on 6th April, 2019, the Court issued a temporary injunction restraining the Respondents by themselves, and or their agents or anybody acting on their behalf from interfering with the peaceful occupation of the suit property and cease doing anything and more specifically give vacant possession for the property known as **L.R NYARIBARI/CHACHE/BOBURIA/5816**. The Respondents were served with the said order on the 13th day of May, 2019 but they have refused to give vacant possession of the suit property in disobedience of the said court order.

3. Despite being duly served with the application, the Respondents did not file any response and the application is therefore unopposed.

ISSUE FOR DETERMINATION

4. Having considered the Notice of Motion, Supporting Affidavits and Counsel's submissions, the singular issue for determination is whether the Respondents ought to be punished for disobeying the order of this Honourable Court issued on the 6th day of April, 2019.

ANALYSIS AND DETERMINATION

Black's Law Dictionary Ninth Edition) defines contempt of court as follows:

“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine for imprisonment”

5. The rationale for contempt orders is set out in the case of **Teachers Service Commission V Kenya National Union of Teachers & 2 others (2013) eKLR** where **Ndolo J** observed as follows:

“38. The reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law”

6. Furthermore, in Econet Wireless Kenya Ltd VS. Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828 Ibrahim, J (as he then was) stated:

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void”.

7. In the case of Kenya Human Rights Commission V Attorney General and Another (2018) eKLR, the Court observed as follows:

“Article 159 of the Constitution recognizes Judicial Authority of the Courts and Tribunals established under the Constitution. Courts and Tribunals exercise this authority on behalf of the people and for that reason they must not only be respected and obeyed but must also be complied with in order to enhance public confidence in the Judiciary which is vital for our Constitutional democracy. The Judiciary acts in accordance with the laws (Article 160) and exercises its authority through its judgments, decrees and orders or directions to check Government Power, keep it within the Constitutional stretch, hold the Legislature and Executive to account and thereby secure the rule of law, Administration of Justice and protection of Human Rights. For that reason, the authority of the Courts and dignity of their processes are maintained when Court orders are obeyed and respected thus Courts become effective in the discharge of their Constitutional mandate...”

8. It is therefore a fundamental rule of law that court orders be obeyed and where an individual is enjoined by an order of the Court to do or refrain from a particular act, he has a duty to carry out that order. The Court has a duty to commit that individual for contempt of its orders where he deliberately fails to carry out such orders. See Louis Ezekiel Hart V Chief George1 Ezekiel Hart SC 52/2983 2nd February 1990.”

...The fact that the power to punish for contempt is inherent and not granted by statute follows the recognition by the Constitution in Article 159 that Judicial Authority is derived from the people and vests in and is exercised by Courts and Tribunals established by or under the Constitution”

9. In order to make a case for Civil contempt the Applicant must prove certain elements which were set out in the case of Cecil Miller V Jackson Njeru (2017). The Court cited the book entitled “Contempt in Modern New Zealand which sets out the elements of Civil contempt as follows:

- a) That the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the Defendant.
- b) That the Defendant had knowledge of or proper notice of the terms of the order.
- c) That the Defendant acted in breach of the terms of the order.
- d) That the Defendant’s conduct was deliberate.

10. In the instant case, the order dated 6th April, 2019 issued on 9th May, 2019 in Kisii CM ELC Case No. 19 of 2019 was served upon the Respondents on the 13th May, 2019 as evidenced by the Affidavit of service of Isaiah Miruka which is annexed to the Applicant’s Supporting Affidavit. The said order is clear and unambiguous and is binding on the Respondents. The Respondents having been served with the said order, have deliberately failed to vacate the suit premises. It is therefore my finding that the Respondents are culpable of disobeying the court order dated 6th April, 2019. The matter shall be mentioned on 4th February, 2020 for sentencing.

Dated at Kisii this 21st day of January, 2020.

J.M ONYANGO

JUDGE