



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT ELDORET

CIVIL SUIT NO. 50 OF 2018

LITTLE HILLS FLORA LIMITED.....1ST PLAINTIFF

STEPHEN KIPKERING SUGUT.....2ND PLAINTIFF

LEAH CHEPCHUMBA SUGUT.....3RD PLAINTIFF

V

INDUSTRIAL & COMMERCIAL

DEVELOPMENT CORPORATION.....1ST DEFENDANT

WAKARIMA INVESTMENT

COMPANY LIMITED.....2ND DEFENDANT

JOYLAND AUCTIONEERS.....3RD DEFENDANT

RULING

1. By an application made under certificate of urgency dated 21.1.2020 supported by an affidavit sworn by Jackson Ruiru, the applicant (WAKARIMA INVESTMENT COMPANY LIMITED) seeks:

- i. To cite **STEPHEN KIPKERING SUGUT** (the 2nd plaintiff herein) for contempt of court against the orders issued by this court on 13.11.2018.
- ii. An order to commit him to civil jail for a period not exceeding six (6) months or as this court may deem fit or that he pays a specific amount of money, failure to which his properties should be attached to pay the said amount.
- iii. An order to the County Commander Uasin Gishu to provide security in enforcement of the said orders.

2. The application is premised on the grounds that the 2nd plaintiff was strained from cutting down trees, cultivation, selling or leasing the suit land or transferring the same. The orders were made in the presence of the 2nd plaintiff's counsel, and the 2nd plaintiff was served with the said order together with the penal notice, but he has continued to carry out the activities restrained by this court. Further he has put up security to prevent people from accessing the suit land and has even hired goons who have bows and arrows. That this is a blatant show of disregard of the court orders, and the 2nd plaintiff therefore has to be punished to safeguard the integrity of this court since court orders are to be obeyed by all.

3. The deponent Jackson Ruiru attached a copy of the court order dated 13.11.2018, an affidavit of service to show proof of service of the order and photographs showing the economic activities being carried out by the 2nd plaintiff.

4. The 2nd plaintiff by replying affidavit dated 12.2.2020 denying the allegations brought forth by the 2nd defendant, insisting that he has not carried out any economic activity on the land to waste away the suit land, he had not planted any fodder, maize, felled any tree, leased out the land nor erected gates and allowed boda boda operators to erect a shade. He explains that the shed had been erected by the county government since he had no power to do so and the gates were in existence way before the suit was instituted and the coffee and sunflower keep growing since they had been planted way before the suit was instituted.

5. In addition to the above he faults the applicant as failing to demonstrate how he is in contempt of the court orders and the application had

been brought in bad faith and was an abuse of the court process.

6. Parties agreed to canvass the application by way of written submissions.

7. The applicant points out that the orders of the court which were unambiguous and unequivocal were issued on 13.11.2018 were made in the presence of the respondent's counsel and the same was served upon the 2nd respondent on 5.12.2019. The applicant referred to **SHIMMERS PLAZA LIMITED V. NATIONAL BANK OF KENYA CACA NO. 33/2012** where the Court of Appeal pointed out that service of the order has to be personal and accompanied by the endorsement of the consequences of the disobedience. In addition, the person alleged to be in contempt of the act complained about has to be in full knowledge of the existence of the order. and neither the respondent nor his advocate deny being aware of the order of this court. This submission is made in light of the growing jurisprudence which is fast recognizing that knowledge of a court's orders suffices to prove and dispense with personal service for the purposes of contempt proceedings.

8. It is the applicant's contention that the respondent has taken a brazen approach to the application now before court, and his denial that he has not planted any coffee or sunflower is not true since the photos were taken on 14.12.2019, showing well maintained coffee trees (some of which are yet to yield), and that fertilizer is being applied on the coffee bushes. That the sunflower crop matures after 3 months and the 2nd plaintiff has failed to prove that what is currently complained of is the first old crop, as there are no weeds, and they cover a large portion of the land, and there is no way in which the crops can keep on growing every year if they are not being tended. That this can only mean the crop was planted after the court order had been issued. That he has also continued to plant and harvest maize on the land.

9. It is also pointed out that apart from growing crops on the land, the 2nd plaintiff has continued grazing livestock, and in-fact has a dairy farming project on the suit land, demonstrated by the images of cows, cow dung as well as cattle feeds captured in the annexed photographs, and also erecting 3 gates to prevent security personnel from accessing the suit property, and leasing part of the land to boda boda operators, who have now erected a shed

The respondent has not filed any submissions.

ANALYSIS AND DETERMINATION

10. The issue that arises for determination is whether the respondent is in contempt of the said order issued on 13.11.2018 and whether the applicant has satisfied the threshold for one to be cited to be in contempt.

11. The applicant is seeking for contempt orders against the respondent. The respondent moved this court by filing suit and even testified on 3.7.2019. The 2nd defendant had however made an application under certificate of urgency dated 25.10.2018 for the reason that the respondent had embarked on cutting trees and disposing the same. The court then issued orders as follows:

- i. Status quo be maintained to the extent that nothing changes on the land including not cutting trees, no further cultivations, no selling or leasing the land or transferring the land pending *inter partes* hearing.

12. The law applicable for the contempt of court proceedings is **section 5 of the Judicature Act Cap 8 Laws of Kenya**. This section provides as follows:

(1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.

(2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.

13. Needless to say, court orders once issued have to be obeyed and the same is binding. In **Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828** where Ibrahim J as he then was, stated as follows:

“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”

14. In the case of **Mwangi H.C. Wangonde v. Nairobi City Commission, Nairobi Civil Appeal No. 95 of 1998** it was held that the threshold of proof required in contempt of Court orders is higher than that in normal civil cases, and one can only be committed to civil jail or otherwise penalized on the basis of evidence that leaves no doubt as to the contemnor's culpability.

15. The applicant in this case, stated that the respondent's counsel was present in court when the said order was issued. An applicant has to demonstrate that the person who is in contempt was aware of the issuance of the order. The applicant has shown that the respondent was served in person and when the order was issued his counsel was present in court. The respondent cannot be in dispute that he was served with the order. In any event as pointed out, the growing jurisprudence is that knowledge surpasses service- see **Lenaola (J) in BASIL CRITICOS V ATTORNEY GENERAL AND 8 OTHERS [2012] eKLR**

16. The issue is whether the respondent has carried out economic activities as alleged. The applicant in his submissions has stated that the photos were taken on 14.12.2019 this is after the respondent questioned the time when the economic activities were developed. The applicant raised certain factual and pertinent issues such as the well-groomed state of the crops, the presence of cows and cattle feed on the land – which the respondent has failed to sufficiently rebut. The applicant claims that the gates and the boda boda sheds were erected by the county government, but nothing has been presented to support that, nor does he deny that even if the same were done by the County Government, it was with his permission

17. I hold and find that the respondent is in contempt of the court orders, and **direct that:**

a) warrant of arrest shall issue against STEPHEN KIPKERING SUGUT.

b) The County Commander Uasin Gishu do provide security in the execution of the arrest, and the applicant shall meet the costs for such exercise

E-Delivered and dated this 16th day of July 2020

H.A. OMONDI

JUDGE