



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**CIVIL CASE NO.3 OF 2019**

**KIPROTICH LANGAT**

**GEOFFREY KORIR**

**JANETH NYABOKE & 6 OTHERS.....PLAINTIFFS**

**VERSUS**

**SOCIAL SERVICE OFFICER, LONDIANI.....1<sup>ST</sup> RESPONDENT**

**SAMWEL KOECH .....2<sup>ND</sup> RESPONDENT**

**NANCY WANJIRU NJOGU.....3<sup>RD</sup> RESPONDENT**

**GEOFFREY MAINA & 6 OTHER OFFICIALS.....4<sup>TH</sup> TO 10<sup>TH</sup> RESPONDENT**

**RULING**

1. The Application coming for consideration in this ruling is dated 30/1/2020 seeking the following Orders.

- (i) **THAT** the Application be certified urgent in the first instance (SPENT).
- (ii) **THAT** this Court be pleased to cite the Respondents for contempt of Court Orders dated 20/6/2019.
- (iii) **THAT** this Court be pleased to punish the Respondents for violating the Court Orders dated 20/6/2019.
- (iv) **THAT** the Respondents do meet the costs of the Application.

2. The Application is based on the grounds on the face of it and supported by the Affidavit of **GEOFFREY KORIR**, the 1<sup>ST</sup> Plaintiff/Applicant in which he has deposed as follows:-

- (i) **THAT** he is the Secretary of **SORGET COMMUNITY FOREST ASSOCIATION** and he is aware that this Court issued an Order on 20/6/2019 which the Respondents have violated.
- (ii) **THAT** the Respondents have held several meetings of members in violation of the said Orders.
- (iii) **THAT** meetings were held on 20/1/2020 and 24/1/2020 to discuss finance collection and other Administrative Matters.
- (iv) **THAT** the Applicants who are the elected officials have not handed over the Office and Equipment and the Respondents have gone ahead to create their own in violation of the Court Order and they should be punished.

3. The Respondents filed a Replying Affidavit sworn by the 2<sup>nd</sup> Respondent **SAMWEL KOECH** on 11/9/2020 in which he deposed as follows:-

- (i) **THAT** the Respondents are not aware of any Orders dated 20/6/2019 since the Orders were not served upon them.
- (ii) **THAT** they have not interfered with the Applicant's Accounts.

(iii) ***THAT*** the receipts produced belong to Kenya Forest Service and not Sorget Community Forest Association.

(iv) ***THAT*** the Applicants are not genuine paid up members of Sorget Forest Association and they are not supported by the members of the said Association.

(v) ***THAT*** the Applicants have not demonstrated what loss they are likely to suffer should the Application be rejected.

4. The parties were directed to file written submissions in the Application dated 30/1/2020 which I have duly considered.

5. The court gave orders on 20/6/2019 in the Application dated 16/5/2019 in the following terms:-

(i) ***THAT*** status Quo that hand over has not taken place be maintained in the interim and accounts not to be interfered with.

(ii) ***THAT*** the Application will be canvassed by written submissions and each party has twenty one days.

(iii) Mention on 25/9/2019.

6. The Respondents stated in their submissions that they were not served with the said orders and further that they did not interfere with the Accounts ran by the Applicants.

7. This Court delivered a ruling on 4/6/2020 in which the Application dated 16/5/2019 was allowed in the following terms:-

(i) ***THAT*** the Status Quo orders already granted by this Court are hereby extended and maintained until 15/10/2020 when they will automatically lapse.

(ii) ***THAT*** the costs of the Application will follow the decision in the main case herein.

8. For parties to be cited for contempt of Court, it has to be shown that they were served with the Order and they willfully failed to comply.

9. In the case of **Republic v Principal Secretary, Ministry of Defence Ex parte George Kariuki Waithaka [2019] eKLR** it was held that;

**“This Court notes that Kenyan courts have also held that personal service of orders and a penal notice is a requirement in contempt of court proceedings, and reference is made to the Court of Appeal decisions in Nyamogo & Another v Kenya Posts and Telecommunications Corporation, (1994) KLR 1, and Ochino & Another v Okombo & 4 others (1989) KLR 165 in this respect”.**

10. There is no evidence that the Respondents were served with the Orders dated 20/6/2019.

11. The said Orders which are attached to the Application dated 30/1/2020 are ambiguous and it is not clear what Status Quo meant. It is not clear whether that order related to the elections or only in respect to the accounts run by the Applicants.

12. The Applicants submitted that the Orders were made in the presence of Mr. W. K. Ngeno Advocate for the Respondents. The law requires that the Applicant has to demonstrate that the contemnors were personally served or that they were aware about orders requiring them to do an act or to refrain from doing a particular act.

13. It has also been held in several judicial decisions that if personal awareness of the court orders by the alleged contemnors is demonstrated, they will be found culpable of contempt even though they had not been personally served with the court orders. See in this regard the decisions in **Kenya Tea Growers Association vs Francis Atwoli & Others , Nairobi High Court Constitutional Petition No 64 of 2010, Husson v Husson, (1962) 3 All E.R. 1056, Ronson Products Ltd v Ronson Furniture Ltd (1966) RPC 497, and Davy International Ltd vs Tazzyman (1997) 1 WLR 1256 .**

14. In the current case, the order for Status Quo was not specific and further there is no evidence that it was served upon the Respondents personally.

15. The Order

***“Status Quo that the handover has not taken place to be maintained in the Interim and Accounts not to be interfered with”.***

Is not explicit.

16. The said Order was Extended in the following terms one year later on 4/6/2020

***“THAT the Status Quo Orders already granted by this Court are hereby Extended and maintained until 15/10/2020 when they will automatically lapse”***

17. The Order for Status Quo meant that no handing over was to be done until 15/10/2020.

18. I find this matter took a long time for determination of the Application dated 16/5/2019 due to the closure of the Courts due to Covid-19 Pandemic. In the ruling dated 4/6/2020, my predecessor had the following to say at Paragraph 3.

***“Do the plaintiffs have a Prima Facie case with probability of success? The Plaintiffs filed this case which is pending. They claim that the election held to replace them as officials of SORGET Community Forest Association was irregular.***

***They have asked for reliefs from this Court. On the other hand the Defendants have claimed that the election meeting was proper and lawful.***

***I cannot at this preliminary stage determine such substantive issue. It will be determined after evidence on both sides is heard.”.***

19. I find that the Court directed that the case “ ***be determined after evidence on both sides is heard*** “ and that has not yet been done and therefore the Order to maintain Status Quo was not Explicit.

20. The Status Quo Orders lapsed on 15/10/2020 and the substantive suit is yet to be heard. The Applicants are directed to proceed to full hearing where all the substantive issues will be determined.

21. I find that the Application dated 30/1/2020 has been overtaken by events since the Orders of Status Quo expired on 15/10/2020.

22. The Application dated 30/1/2020 is accordingly dismissed for want of merit. Each party to bear its own costs of the said Application.

23. The Defendants have not filed their defence herein but the case can be set down for hearing interpartes in accordance with the Provisions of Order 10 Rules 9 & 10 of the Civil Procedure Rules.

**Delivered, signed and dated at Kericho this 6th day of November 2020.**

**A. N. ONGERI**

**JUDGE**