



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ELDORET

MISCELLANEOUS APPLICATION NO. 56 OF 2019

ESTEHR NYAGUTII MAINA.....PLAINTIFF

VERSUS

RACHEL WANJIKU KAMARA.....1ST DEFENDANT

JAMES GITHINJI KAMARA.....2ND DEFENDANT

RULING

This ruling is in respect of a notice of a preliminary objection by the respondent/applicant dated 4th January 2020 on the grounds that this court does not have jurisdiction to hear and determine this matter.

Counsel for the applicant relied on the provisions of section 10(3) and section 25 of the Magistrates court Act No 26 of 2015 and urged the court to dismiss the suit with costs to the respondents.

Counsel for the applicant/respondent submitted that section 10 (3) of the Magistrates court Act simply states that civil disobedience of court orders constitutes contempt but does not provide how the person in contempt or disobedience will be punished. Counsel therefore submitted that the power to punish contempt of court is vested in the High court thus the court has jurisdiction to do so.

Mr. Miyianda urged the court to dismiss the preliminary objection with costs.

ANALYSIS AND DETERMINATION

This is a preliminary objection by the respondent on the grounds that the court lacks jurisdiction to hear and determine this matter pursuant to section 10(3) and section 25 of the Magistrates' Court Act No. 26 of 2015.

The issue for determination is whether this court has jurisdiction to determine the application by the applicant and whether the same meets the threshold for preliminary objections. The respondent filed a notice for preliminary objection and filed submissions in support of the PO.

The Magistrates' Courts Act, 2015 came into force on 2nd January 2016 which gives the magistrate's courts unlimited jurisdiction to punish for contempt. Section 10 of the said Act specifically provide:-

“(1) Subject to the provisions of any other law, the Court shall have power to punish for contempt.

(2) A person who, in the face of the Court-

(a) assaults, threatens, intimidates, or insults a magistrate, court administrator, judicial officer, or a witness, during a sitting or attendance in Court, or in going to or returning from the Court;

(b) interrupts or obstructs the proceedings of the Court; or

(c) Without lawful excuse disobeys an order or direction of the Court in the course of the hearing of a proceeding, commits an offence

(3) In the case of civil proceedings, the willful disobedience of any judgment, decree, direction, order, or other process of a court or

willful breach of an undertaking given to a court constitutes contempt of court.”

The prevailing law before the amendment of the Act was that the Magistrates courts had no powers to punish for contempt. Section 10(3) is in respect of civil proceedings before the court and any disobedience of a decree or order of the court constitutes contempt and is punishable by the same court.

Consequently I find that the preliminary objection has merit and is therefore upheld and the suit dismissed with cost to the applicant/Respondent.

DATED and DELIVERED at ELDORET this 23RD DAY OF APRIL, 2020

M. A. ODENY

JUDGE