



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 41 OF 2013 (OS)

IN THE MATTER OF DIVISION OF MATRIMONIAL PROPERTY

BETWEEN

P.N.K.....APPLICANT

AND

J.K.M.....RESPONDENT

RULING

1. This ruling relates to the application dated 7th March 2018 where the applicant sought for the following orders:-

- **The respondent be held to be in contempt of the Court order dated 3rd October 2014.**
- **That the respondent be committed to jail for a period of 6 months for the said contempt.**
- **And the respondent be denied audience until he purges the said contempt.**

2. The application was predicated on grounds that the respondent failed to obey the court order issued on the 3rd of October, 2014 as he proceeded to transfer, alienate and/or sale several suit properties against the said order, as a result the applicant continues to suffer irreparable harm due to such breach, further as the respondent remains defiant of the said order he is underserving of the court's discretion.

3. In the affidavit in support of the application the applicant **P. N. K** deposes that after judgment was delivered herein, she proceeded to do searches on the matrimonial properties, when she discovered that despite the restraining orders issued on 3rd October 2014 directing the defendant and/or his agents not to alienate, transfer, encumber or dispose of the properties subject matter of the suit pending hearing and determination, the respondent had transferred three without her knowledge or consent and contrary to the said order.

4. That the respondent transferred;

- i. Athi River/Athi River Block [particulars withheld] to Gladys Mutindi Mutune on 11th September, 2015.**
- ii. Athi River/Athi River Block [particulars withheld] to George Kitili Mwendwa on 16th August 2016.**
- iii. Athi River/Athi River Block [particulars withheld] to Eric Mule Kitili on 30th June, 2016.**

5. The application was opposed by way of grounds of opposition and a replying affidavit. In the grounds of opposition, the application was said to be defective, lacking in merit, brought in bad faith and otherwise an abuse of the court process.

6. In the replying affidavit dated 12th April 2018, the respondent stated that there was no proof that he executed any transfers while the court order was in force. Further that on his part, he had executed the transfer of **Athi River/Athi River [particulars withheld]** to Eric Mule Kitili before the order was issued and that Ben Kasau Mutiso is the one who **transferred Athi River/Athi River [particulars withheld]** to George Kitili Mwendwa. As regards the third property **Athi River/Athi River Block [particulars withheld]**, he contended that he could not remember transferring the property to one Gladys Mutindi Mutune. With the above he urged that the application ought to be dismissed.

7. In the replying affidavit the Respondent admits having been served with the court order subject herein, meaning that he was aware of the content therein. He does not state that there were any difficulties in observing the same or what effort he put in place to comply as he ought

to have done. The evidence on record indicates that the respondent owned **Athi River/Athi River Block [particulars withheld]** since the 28th of May 1997 and from the Search certificate annexed to the application, title was transferred from the respondent to Eric Mule Kitili on 11th September 2015, more than a year after the court had issued the order. Even if, as the respondent claims he had transferred the title prior, which is doubtful, transfer had not been officially affected as at the date the court issued the order, and long thereafter, the respondent had an opportunity to comply with the order by cancelling any transfer documents with minimum inconvenience since the transferee is their son. His action smacks of total defiance of the order and I so find.

8. As regards property **Athi River/Athi River [particulars withheld]** evidence before Court shows that the Respondent purchased the same from Benard Kasuu Mutiso on 14th February 2004 and the same was transferred to George Kitili on 15th August 2016. This is about 2 years after the court order. Even though Benard Kasuu Mutiso did a direct transfer to George Kitili it must have been at the behest of the respondent who had purchased the same from him way back. The act of causing the transfer to be done, knowing fully well that the court had issued restraining orders cannot be anything else but a show of defiance towards the said court order in a cunning manner and in an attempt to circumvent justice.

9. As for property **Athi River/Athi River Block [particulars withheld]** the respondent feigns ignorance of how title passed from him to the current registered owner, indeed, he does not claim fraud, it follows therefore that this happened because he caused the transfer. This again he did on 11th August 2015 a year after issuance of the order. He ignored, disrespected and failed to act in compliance and is guilty of contempt.

10. Failure to obey court orders is taken very seriously, as court orders are not made in vain. Courts have emphasized over time the need to obey court orders whether they suit a litigant, or are deemed valid or not, for as long as the same have not been set aside. This is necessary in a bid to uphold the rule of law which is fundamental in the administration of justice and in keeping law and order in a civilised society as we claim our is. There are no two ways about it failure to comply will be followed by punishment.

In the case of **TEACHERS SERVICE COMMISSION v KENYA NATIONAL UNION OF TEACHERS & 2 others [2013] eKLR** Ndolo J observed that:

“The reason why courts will punish for contempt of court then 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. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed. A court order is not a mere suggestion or an opinion or a point of view, it is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case”

In an earlier case **JOHNSON Vs GRANT (1923) SC 789 at 790** Clyde L J stated as follows; -

“The phrase ‘contempt of court’ does not in the least describe the true nature of the class of offence with which we are here concerned.... The offence consists in interfering with the administration of the law; in impeding and perverting the course of justice..... it is not the dignity of court which is offended – a petty and misleading view of the issues involved, it is the fundamental supremacy of the law which is challenged.”

In **REPUBLIC Vs THE KENYA SCHOOL OF LAW & ANOTHER Miscellaneous Application No. 58 of 2014** the court said; -

“Court orders it must be appreciated are serious matters that ought not to be evaded by legal ingenuity or innovation. By deliberately interpreting orders with a view to evading or avoiding their implementation can only be deemed to be contemptuous of the court....”

11. The next issue for consideration is whether the respondent ought to be given further audience or not.

Where courts have found that the course of justice has been undermined by the continued disobedience of its order they have refused to give audience to such a person until the contempt has been purged.

In **A.B AND HB Vs R.B** the Court of Appeal sitting in Malindi in Civil **Application No. 4 of 2016** said; -

“In the peculiar circumstances of this case where the rule of law is at risk of being deliberately undermined, we decline to hear the applicants until they have complied in full with the orders of the High Court or until further orders of that court”.

In **HADKINSON vs. HADKINSON [1952] 2 ALL ER 562**, the English Court of Appeal stated;

“Held (per Somervell and Romer, L.JJ.), that it was the unqualified obligation of every person against, or in respect of whom, an order had been made by a court of competent jurisdiction, to obey it unless and until that order was discharged; that the mother in the present case had not brought herself within any of the exceptions to the general rule which debarred a person in contempt from being heard by the courts whose order he had disobeyed; and that she being in continuing contempt by retaining the infant out of the jurisdiction her appeal could not be heard until she had taken the first and essential step towards purging her contempt by returning the child within the jurisdiction.

Held Per Denning L.J.: The fact that a party to a cause had disobeyed an order of the court was not of itself a bar to his being heard, but if his disobedience was such that, so long as it continued, it impeded the course of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it might make, then the court might in its discretion refuse to hear him until the impediment was removed. The present case was a good example of a case where the disobedience of *the party impeded the course of justice.*”

12. Against the findings referred above and in the circumstances of this case I find that the respondent is in total contempt of the court order made by this court on the 3rd October 2014, I also find that his continued disobedience of the said orders is an impediment to the administration of justice and will continue to be so unless he purges the contempt.

13. Consequently, I direct and order that the respondent be committed to jail for a period of 3 months for the offence of contempt of court. Secondly that he shall not have audience of this court unless and until he purges the contempt or until further orders of the court.

14. Costs to the Applicant.

SIGNED DATED and **DELIVERED** in open court this **4TH** day of **OCTOBER, 2018.**

ALI-ARONI

JUDGE