



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

MISC. APPLICATION NO. 513 OF 2015

JOHN MUTHEE NGUNJIRI

PETER OTIENO OKETCH

CHARLES MAINA WANDAKA

EVANS EKALICHE ATTANASI

**SILAS RICHARD MUKOLWE (SUING AS THE DULY REGISTERED TRUSTEES OF KENYA
AFRICAN NATIONAL UNION NAKURU BRANCH)PLAINTIFFS**

VERSUS

STEPHEN MUIRURI KURIA.....DEFENDANT

RULING

(Application for contempt; injunction issued by Magistrate's Court; allegation that respondent has disobeyed the same; court that issued the injunction has mandate to hear an application for its disobedience; directions issued for Magistrate to handle the application for disobedience of the injunction).

1. The application before me is that dated 7 October 2015. It is brought inter alia under the provisions of Section 5 of the Judicature Act, CAP 8, Laws of Kenya. It seeks orders that the respondent be found guilty of contempt of court regarding an order of injunction given in the case Nakuru CMCC No. 600 of 2015. It further asks that the respondent be jailed for a term not exceeding 6 months and he be ordered to pay to the applicants the sum of Kshs. 310, 050/= being the value of construction goods said to have been damaged by the respondent.

2. The supporting affidavit is sworn by the 4th applicant. He has deposed that he and the other three applicants, as officials of Nakuru KANU Branch, filed the suit Nakuru CMCC No. 600 of 2015. They also filed a motion dated 9 June 2015 and the learned trial Magistrate, L.L Gicheha issued interim orders of injunction on 11 June 2015. He has deposed that the orders were served upon the respondent but that the respondent subsequently breached the injunction by invading the suit land which is Nakuru Municipality Block 9/31 which is said to be owned by the Nakuru KANU Branch. The applicants then filed a motion dated 24 June 2015 alleging breach of the order of injunction. It is said that the court extended the interim orders and directed that the two applications be heard together. The applications were heard on 30 July 2015 and the orders of injunction granted pending hearing and determination of the

suit. It is deposed that on the application for contempt, the court held that it had no jurisdiction to punish for contempt as that lay with the High Court hence the current application. It is said that the contempt was reported to the police station and that there is a tape recording vide which the respondent uttered filthy and contemptuous words towards the court.

3. The application is opposed by the respondent who filed a replying affidavit. He denied invading the suit property or causing any destruction or loss of building materials.

4. Having considered the matter, I feel that it is not necessary for me to deal with this application in the manner that it is drawn.

5. The complaint of the applicant is that there was disobedience of an order of injunction. The application for injunction was made vide the provisions of Order 40. Order 40 Rule 3 which provides for the consequences of breaching an order of injunction is drawn as follows :-

3. Consequence of breach [Order 40, rule 3.]

(1) In cases of disobedience, or of breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release.

(2) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.

(3) An application under this rule shall be made by notice of motion in the same suit.

6. It will be noted from Order 40 Rule 3 (1) that the court that granted the injunction has jurisdiction to punish in case of breach. Indeed under Order 40 Rule 3(3), an application alleging disobedience is supposed to be made by way of notice of motion in the same suit.

7. If the trial Magistrate declined to hear the application for breach of the order of injunction, on the reason that she did not have jurisdiction to do so, and only the High Court could punish, that cannot be a correct holding.

8. I of course have powers to punish for contempt under Section 5 of the Judicature Act, and can opt to treat this as a contempt application under that provision, for a disobedience of an order of injunction can also be deemed to be an issue of contempt of court. But I think that it is wiser if I defer the matter to the Magistrate's Court which is the court which issued the order of injunction. I therefore choose not to deal with this application but defer the same to the court which issued the order of injunction. My direction is that the learned Magistrate, do proceed to deal substantively with the application dated 24 June 2015.

9. It is so directed.

Dated, signed and delivered in open court at Nakuru this 10th day of May, 2016.

MUNYAO SILA

JUDGE

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In presence of: -

Mr. Geoffrey Otieno holding brief for Mr. Lawrence Mwangi for applicants.

No appearance for Nancy Njoroge for respondent.

Court Assistant: Janet

MUNYAO SILA

JUDGE

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