



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL APPEAL NO. 2 OF 2015

JASON MWINGIRWA.....APPELLANT

VERSUS

DICKSON K. TURUCHIU.....RESPONDENT

(An appeal from the orders of the Learned D. Wangeci, SRM dated 12.1.2015 vide CMCC No.202 of 2014 between Diskson K. Turuchiu vs Stephen Muthaura)

R U L I N G

1. The Memorandum of Appeal states that the appellant Jason Mwingirwa having been aggrieved by the orders of the Learned Senior Resident Magistrate, Hon D. Wangeci, has the following grounds of Appeal:

1. ***That the learned trial magistrate erred in facts and the law by finding the appellant to be in contempt of court order without ascertaining whether the appellant was served with the court order in issue as required in Law.***
2. ***That the learned trial magistrate erred in facts and the law by finding the appellant in contempt of a court order when the appellant was not served or aware of the said court orders.***
3. ***That the learned trial magistrate erred in facts and the law when she found the appellant in contempt of a court order when the appellant was neither a party in the suit or agent of the defendant in the suit.***
4. ***That learned trail magistrate erred in facts and the Law by finding the appellant in contempt of court orders and sentencing the appellant for 30 days despite the affidavit of the owner of the subject matter who was not even a party.***
5. ***That the learned trial magistrate erred in law and facts by disregarding the principles and the law governing the process of contempt proceedings which are quasi-criminal in nature.***

2. Predicated upon the above grounds he prays as follows:

- a) **Appeal be allowed and the Orders of 12.1.2015 finding the appellant to be in contempt of court orders be set aside.**
- b) **The appellant be released from prison forthwith.**
- c) **Costs of this appeal be awarded to the appellant against the respondent**

3. The appellant has as one of his main submissions that the orders which are said to have been disobeyed were not directed at him. He also says that the subject orders were not served upon him and that he was not an agent of the owner of the property in dispute. He says that the orders were served upon Jason Mwingirwa whereas he is Jason Mungiria.

4. The appellant submits that he was not accorded a chance to be heard and was merely arrested and sentenced to serve 30 days in prison without being accorded a chance to be represented.

5. The appellant submits that:

a) **He has an arguable appeal.**

b) **He officers security.**

c) **He is likely to suffer substantial loss since he will have served his entire sentence by the time this appeal is heard and determined thus rendering his appeal superfluous and useless.**

6. The appellant reiterates that he has no interest in the property in dispute and should not be subjected to litigation he had no personal interest in and more so since he was not a party to the substantive suit.

7. The respondent opposes the application and among other things says the trial court undoubtedly confirmed that the appellant was a representative, assign, employee, servant or agent of Stephen Muthaura who is the defendant/respondent in the primary case. He relies on the report of the O.C.S annexed at paragraph 8 of the replying affidavit annexed as "DKT4".

8. The appellant vigorously submits that the appellant was aware of the apposite order of injunction. He also submits with a lot of finality that the appellant/applicant disobeyed the order of injunction in question.

9. Regarding the claim that the appellant 's name was Jason Mungiria and not Jason Mwingirwa, the respondent says it is the appellant who told the Court on 9.1.2015 that he was Jason Mwingirwa.

10. I have carefully considered the submissions of the parties and the authorities they have proffered. In many instances the parties are submitting as if they are canvassing the appeal itself. Issues as to whether the appellant was Jason Mungiria or Jason Mwingirwa, whether the appellant was an agent of Stephen Muthaura the defendant in PMCC No.2002 of 2014 at Tigania and whether the appellant had been served with the orders alleged to have been disobeyed can only be determined after the appeal is heard.

11. The Court need not reinvent the wheel. The Court of Appeal in the Case of **Mbuthia versus Jimba Credit Corporation [1988] KLR1** opined as follows:

"The correct approach in dealing with an application for an interlocutory injunction is not to decide the issues of fact, but rather to

weigh up the relevant strength of each side's propositions. The lower court judge in this case had gone far beyond his proper duties and made final findings on disputed affidavits."

12. This Court will not delve into the determination of disputed facts at this interlocutory stage.

13. In the interests of justice I rule as follows:

1. **This court grants an order of stay of execution of the orders of 12.1.2015 in PMCC No. 2002 2014 pending hearing and determination of the appeal subject to the appellant depositing a sum of Kshs.15,000/= into Court as deposit for security within 14 days of the delivery of this ruling.**

2. Costs shall be in the cause.

It is so ordered.

Delivered in Open Court at Meru this 19th day of October, 2015 in the presence of :

Cc. Daniel/Lilian

Muthamia for the Appellant/Applicant

Respondent or Advocate Absent

P. M. NJOROGE

JUDGE