



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**MISCELLANEOUS CIVIL APPLICATION NO.41 OF 2013**  
**IN THE MATTER OF CONTEMPT OF COURT**

**AND**

**IN THE MATTER OF THE CHIEF MAGISTRATE'S COURT'S CIVIL CASE NO. 375 OF 2013**

**BETWEEN**

RAELI TAPSABEL.....APPLICANT

**VERSUS**

DAVID RONO.....RESPONDENT

**RULING**

***(Application for contempt; order of injunction issued and disobeyed; respondent clearly in contempt; application allowed.)***

The application before me is that dated 11th November, 2013. It seeks to have the respondents committed to jail for contempt of court. The order that is said to have been disobeyed is the order of injunction given on 25th September, 2013. The background to this order is that the applicant had instituted the suit Kericho ELC case No. 58 of 2013 in the Environment and Land Court in Kericho over the land parcel Kericho/Silibwet/2713. Within the suit, the applicant filed an application for injunction which was considered ex-parte on 25th September 2013, by my predecessor, Justice Waithaka. Inter alia, the Honourable Judge issued the following orders :-

*That pending the hearing and determination of this application, the defendant/respondent, their servants and/or agents or otherwise however be restrained from carrying out any further construction on the suit land named as L.R No. Kericho/Silibwet/2713 and will open up the access road he had blocked leading to the suit premises and served for mention on 10th October, 2013.*

It is the contention of the applicant that the order was served on 8th October, 2013 and an affidavit of service is annexed to the application. Despite service of the order, the applicant has averred that the respondent continued with construction and has completely refused to open the road of access as ordered. Various photographs are annexed to the application to demonstrate that construction is still ongoing.

In his replying affidavit, the respondent has explained that he purchased the suit property from the applicant and the same was transferred to him. He fenced it and developed some structures. It is his view that the applicant was incited to file this suit by her children so that she can relocate him to another land. He has stated that he cannot be accused of any trespass and that the matter has been investigated by the

police and the District Officer. He has deposed that the applicant did not disclose these facts in her application and that the order of 25<sup>th</sup> September, 2013 is illegal.

In his submissions, Mr. Orina for the respondent, inter alia argued that in an application for contempt proof of service of the order is required; that there was a building already in place when the order of injunction was issued; that the affidavit of service is wanting; that there is ambiguity in the order of injunction as it did not say how the road of access was to be opened; that there was confusion as the order was worded with finality.

M/s Bett & Company Advocates for the applicant, naturally asked that I allow the application.

I have considered the application. It is not in doubt that interim orders of injunction were issued on 25<sup>th</sup> September, 2013. The orders directed the respondent not to proceed with any further construction and to open up a road of access. On my part, I do not see any ambiguity in the orders. In any event, if there was an aspect of the order which was not clear to the respondent, he could have applied to the court for the same to be clarified.

Despite the argument of Mr. Orina that service is doubted, the respondent, in his replying affidavit, has not denied the fact of service. I have also looked at the affidavit of service and to me, it shows that the respondent was duly served with the interim order of injunction on 8<sup>th</sup> October, 2013. I have no reason to doubt it. The respondent was therefore aware of the order of injunction. The respondent has also not denied disobedience of the order. He has not stated that he stopped construction or opened up the road of access. I have looked at the annexed photographs attached to the application which clearly show ongoing construction at the disputed site.

I am therefore satisfied that the respondent disobeyed the order of injunction issued on 25<sup>th</sup> September, 2013. The respondent is clearly in contempt of this court. This court must assert itself. Court orders are not issued in vain and must be obeyed to the letter. Every person must understand that there is no alternative to obedience of a court order. I therefore allow this application with costs. The respondent deserves to be punished for his contempt but before I mete out punishment, I will allow him an opportunity to mitigate.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KERICHO THIS 2<sup>nd</sup> DAY OF OCTOBER, 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**In the presence of:**

Mr. Caleb Koech present for applicant

Mr. E.M.Orina present for respondent