



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**MISCELLANEOUS CIVIL SUIT NO. 41 OF 2013**  
**IN THE MATTER OF THE CHIEF MAGISTRATE'S COURT CIVIL CASE NO.375 OF 2013**

**BETWEEN**

**RAELI TAPSABEI.....PLAINTIFF/APPLICANT**

**AND**

**DAVID RONO.....DEFENDANT/RESPONDENT**

**BETWEEN**

**RAELI TAPSABEI.....APPLICANT**

**VERSUS**

**DAVID RONO.....RESPONDENT**

**RULING**

The subject matter of this ruling is the Motion dated 11th November, 2013 taken out by **Raeli Tapsabei**, hereinafter referred to as the Applicant in which she sought for the following orders:

1. **THAT** the Respondent named herein, David Rono be committed to jail for contempt of court for disobeying the orders of this court given by Honourable Lady Justice Waithaka on 25th September 2013.
2. **THAT** said Respondent be ordered or be kept in prison for a term of not exceeding (6) months or for such terms as this Honourable court may deem fit to order.
3. **THAT** the Respondent do pay costs of this application.

The aforesaid Motion was served upon **David Rono**, hereinafter referred to as the Respondent. The same did not elicit any response from the Respondent.

When the Motion came up for interpartes hearing, the Respondent, again, failed to turn up despite having been served with a hearing notice. This court permitted the Applicant's advocate to proceed exparte to prosecute the Motion.

I have considered the grounds set out on the face of the Motion plus the facts deponed in the affidavits filed in support of Motion. It is the applicant's submission that on 25/09/2013 Lady Justice Waithaka vide

Kericho E&L.C. no.58 of 2013 issued an order of temporary injunction to restrain the Respondent from carrying out further constructions on the parcel of land known as **L.R.no. Kericho/Silibwet/2713** and to open up the access leading to the suit premises. That order was served upon the Respondent on 8th October 2013 by Stephen K. Chebochok a private process service at the suit land while he was supervising the construction of the structure in dispute. It is argued that despite receiving the court order, the Respondent has disregarded the same and has continued with the construction of the building and also refused to open the access road to the Applicant's residence. The Applicant annexed photographs showing the extent of construction.

It is said that the building is now on the 2nd floor. Raeli Tapsabei, passed away on 13th November 2013 and was succeeded by Chirchir Paul Kipsang who successfully obtained limited letters of administration intestate. In a further affidavit of Chirchir Paul Kipsang sworn on 13th February 2014, he stated that he substituted the late Raeli Tapsabei as the Plaintiff in Kericho E&L.C case no.58 of 2013 which was transferred to Kericho Chief Magistrate's Court and renumbered as Kericho C.M.C.C.C no.375 of 2013. Annexed to the further affidavit is the order issued by Hon. Soita, learned Chief Magistrate on 12/11/2013 confirming the interim orders issued on 25th September 2013. The confirmed orders were again served upon the Respondent on 2nd December 2013 as evidenced by the affidavit of service of Stephen Chebochok sworn on 7th January 2014. It said that this time round the Respondent ignored the orders and continued with the construction of the building now reaching 3rd floor level. The averments made in the two affidavits together with the annexures are not contested nor controverted by the Respondent. It is clear in the language used in the orders served and exhibited before this court that the Respondent was prohibited from further constructing the building standing on L.R.no.Kericho/Silibwet/2713. He was also ordered to open the access road leading to the residence of the late Raeli Tapsabei. He has blatantly refused to obey those orders. I find David Rono, the Respondent herein to be in contempt of court hence he is hereby convicted. I have been asked to put him in prison for six months or in the alternative make any order I deem fit. These proceedings being quasi criminal, I think it is only fair to give the Respondent a chance to Mitigate to enable this court mete out the appropriate punishment.

**Dated, Signed and delivered in open court this 14th day of March, 2014.**

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**J.K.SERGON**

**JUDGE**

**In the presence of:**

Mr. Mutai holding brief for Mr. Orina for Respondent

Mr. Mutai for the Applicant

**Mr. Mutai**

I pray for time to enable Mr. Orina contact his client so that he can be present himself to Mitigate.

**Mutai:** No objection

**Court:** This case is adjourned to 19/03/2014 for Mitigation. I direct that David Rono, the Respondent herein, be personally present in court on the aforesaid date. If the Respondent defaults to appear before this court, may issue a warrant of arrest to have him apprehended by the relevant authorities for committal.

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**J.K.SERGON**

**JUDGE**