



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**

**ELC CASE NO. 382 OF 2017**

**JESUGUT TAMINING KIPROTICH.....PLAINTIFF/APPLICANT**

**VERSUS**

**ANTONY KIPKETER ROTICH.....DEFENDANT/RESPONDENT**

**RULING**

This ruling is in respect of an application dated 13<sup>th</sup> July 2020 by the plaintiff/applicant seeking for the following orders:

- a) Spent
- b) An order do issue for the arrest and committal to prison of Anthony Kipketer Rotich, the Defendant herein for willful disobedience of the order of the Honourable court given on 24<sup>th</sup> June 2020 and issued on 2<sup>nd</sup> July 2020.
- c) An order directing the Officer Commanding Cheptiret Police Station to provide peace and security and enforce compliance with the order of the Honourable Court given on 24<sup>th</sup> June 2020 and issued on 2<sup>nd</sup> July 2020.
- d) An order that costs of these contempt proceedings be borne by the defendant/respondent.

The application was served on the respondent and an affidavit of service filed in court but the respondent did not file any response. The application proceeded unopposed by the respondent.

**PLAINTIFF'S SUBMISSIONS**

Counsel for the applicant submitted that the court gave orders of injunction against the defendant on 24<sup>th</sup> June 2020 which order was served on the defendant but he has blatantly disobeyed the court order by continuing with construction on the suit land. That the defendant's actions is an affront to the administration of justice and authority of the court.

Mr. Okara submitted that the defendant upon being served with the order vowed to continue with the construction and became wild as per the supporting affidavit of the applicant.

Counsel relied on the case of **Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another [2005] eKLR** which dealt with the issue of the maintenance of the rule of law and order that the authority and dignity of courts to be upheld

Counsel further relied on the case of **Teachers Service Commission v Kenya National Union of Teachers & 2 others [2013] eKLR** where the court held 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”.*

Counsel therefore urged the court to find that the respondent is in contempt as the order was clear and unambiguous and binding on the defendant. Counsel urged the court to allow the application as prayed.

**ANALYSIS AND DETERMINATION**

The issues for determination in an application for contempt of court are as to whether the terms of the order were clear and unambiguous and that the same were binding on the defendant. The issue of the jurisdiction of the court to punish contempt is also important.

According to the Black's Law Dictionary (Ninth Edition), contempt is defined as:

*“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”*

Before the promulgation of the Constitution in 2010 and the Contempt of Court Act 2016, section 5(1) (now repealed by the Contempt Act, 2016) of the Judicature Act, Cap 8 was mainly the substantive law on Contempt of Court which was only conclusive to the power of the High Court and Court of Appeal to punish for contempt of Court. Other courts, including the Supreme Court, the specialist courts and subordinate courts exercising civil jurisdiction, can punish for contempt of court as well.

Order 40 Rule 3(1) states as follows;

*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.*

The court has jurisdiction to punish for contempt of court in case of disobedience of court orders issued by the same court.

The order which has been disobeyed must be clear and directed to the defendant to do or not to do a certain act with a penal notice on the consequences for disobedience of the order. Was the order served on the respondent and has the respondent disobeyed the terms of the order.

It is on record that the respondent was personally served from the affidavit of service filed in court. In the case of **Mutitika v Baharini Farm Ltd[1985] eKLR** the Court held that:

*“The Courts take the view that where the liberty of the subject is, or might be involved, the breach for which the alleged contemnor is cited must be precisely defined. A contempt of Court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily provided.... It must be higher than proof on a balance of probabilities, almost, but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to offence, which can be said to be quasi-criminal in nature. However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge. Recourse ought not be had to process of contempt of Court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of Judges to see whether there is no other mode which is not open to the objection of arbitrariness, and which can be brought to bear upon the subject. A Judge must be careful to see that the cause cannot be the mode of dealing with persons brought before him. Necessary though the jurisdiction may be, it is necessary only in the sense in which extreme measures are sometimes necessary to preserve men's rights, that is, if no other pertinent remedy can be found....Applying the test that the standard of proof should be consistent with the gravity of the alleged contempt.....”*

The applicant must prove that the breach for which the contemnor is cited must be defined, clear and unambiguous. The order that the court granted was very clear and unambiguous as it stopped the respondent from continuing with construction and interfering with the suit land in any way.

The applicant has also annexed photos showing the continued construction which is in contravention of the court order served on the defendant stopping from continuing with the construction.

An order of the court must be obeyed and if a party is not comfortable with the order, then such a party can approach the court to vary or explain the difficulty with the implementation of the order. There is no option for disobedience as this goes to the authority of the court under attack. Court orders are issued to maintain the rule of law.

In the case of **Econet Wirelss Ltd Vs Minister for Information & Communication of Kenya & Another [2005] eKLR** the court held that:

*“Where an application for committal for contempt of court orders is made the court will treat the same with a lot of seriousness and urgency and more often will suspend any other proceedings until the matter is dealt with and if the contempt is proven to punish the contemnor or demand that it is purged or both. For instance, an alleged contemnor will not be allowed to prosecute any application to set aside orders or take any other step until the application for contempt is heard. The reasons for this approach are obvious- a contemnor would have no right of audience in any court of law unless he is punished or purges the contempt.”*

Once it is shown the respondent is in contempt of court the court must move to punish the contemnor or demand that it be purged or both. I find that the application has merit and the same is allowed with costs. Respondent to appear in court on 12<sup>th</sup> November 2020 for sentencing failure of which a warrant of his arrest be issued.

**DATED and DELIVERED at ELDORET this 27<sup>TH</sup> DAY OF October, 2020**

**DR. M. A. ODENY**

**JUDGE**