



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 20 OF 2012

STEPHEN R.G.G. MUNYI.....PLAINTIFF

VERSUS

THE BOARD OF GOVERNORS KUTUS SECONDARY SCHOOLDEFENDANT

RULING

By his application dated 3rd February, 2014 the applicant seeks leave to commence contempt of Court proceedings against one GRACE NDUNGU the Secretary Board of Governors Kutus Secondary School who are the respondent herein.

The application is brought under the provisions of the *Judicature Act* and is supported by the applicant's affidavit in which he depones, inter alia, that contrary to the orders issued by this Court on 9th April, 2013 that status quo in respect to the land subject of this case be maintained, the respondents have undertaken agricultural activities on the same.

Submissions have been filed by both parties and I have considered them. The submissions seem to have gone beyond what is really required and have addressed the contempt itself.

The matter complained of arose from an order issued by this Court on 9th April, 2013. Both counsels have filed submissions on the assumption that leave is required to bring contempt proceedings where the order said to have been disobeyed is a Court order. That is not the position now. I would advise counsels to familiarize themselves with the Court of Appeal's decision in **CHRISTINE WANGARI GACHEGE VS ELIZABETH WANJIRU EVANS C.A. CIVIL APPLICATION NO. 233 of 2007 NBI (UR 144/2007)** wherein the Court addressed itself as follows on the issue of leave:-

"We find on the basis of the new Civil Procedure Rules (of England) which are now contained in the second supplement to the 2012 White Book that no leave is required before bringing an application like the one before us, for committal for contempt relating to breach of this Court's order".

The Court stated that although the common practice has been for leave to be sought before instituting contempt proceedings, that is no longer the law where the contempt arises out of a Court order. After considering various cases and the law as it now obtains in England, the Court of Appeal made the following statement:-

"It is clear from this summary that leave now called "permission" is not required where committal proceedings relate to a breach of a judgment, order or undertaking".

The Court then proceeded to strike out the application for leave.

That is the same scenario in this case. The contemplated contempt proceedings relate to an order issued by this Court and going by the decision in the **CHRISTINE WANGARI GACHEGE** case (supra), leave is not necessary and this application is incompetent. It ought to be struck out.

Having said so, both parties proceeded to file submissions touching on the contempt itself. Indeed I have enough material on which to proceed with the contempt but that is not the application now before me. That will be dealt with at an appropriate time when the contempt matter comes up.

For now, this application is struck out and since the parties both proceeded on the assumption that leave was necessary, there shall be no order as to costs.

It is so ordered.

B.N. OLAO

JUDGE

14TH OCTOBER, 2014

14/10/2014

Before

B.N. Olao – Judge

Mwangi – CC

Mr. Magee for Plaintiff – present

Mr. Mutahi for Wainaina for Defendant – present

COURT: Ruling delivered this 14th day of October, 2014 in open Court

Mr. Magee for Plaintiff/Applicant present

Mr. Mutahi for Wainaina for Defendant/Respondent present.

B.N. OLAO

JUDGE

14TH OCTOBER, 2014