



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Civil Application 490 of 2012

JANE NDUTA MAINA.....APPLICANT

VERSUS

MUTHONI (WA MONICA).....RESPONDENT

R U L I N G

By a Notice of Motion dated 12th September 2012, expressed to be brought principally under the provisions of Section 5(1) of the Judicature Act, Cap 80 of the Laws of Kenya, rule 52 of the Rules of the Supreme Court of England, Section 3A of the Civil Procedure Act the applicant seeks the following orders:

- 1. That this matter do be certified urgent service dispensed with and heard ex-parte in the first instance.**
- 2. That this matter to be admitted to hearing during the vacation.**
- 3. That the Respondent do be committed to jail for contempt of court pursuant to leave granted on Friday the 7th day of September 2012 per Hon. Mr Justice Mabeya.**
- 4. That costs do be provided by the Respondent in any event.**

The application was filed pursuant to leave granted by the **Hon. Mr Justice Mabeya** on 7th September 2012.

The application is supported by an affidavit sworn by **Jane Nduta Maina**, the applicant herein on 11th September 2012. According the applicant the respondent has disobeyed two court orders issued in CMCC No. 406 of 2012 on 2nd March 2012 and 25th April 2012 by Hon. **R A Oganyo (Mrs) SPM**. According to the applicant on 2nd March 2012 an order of injunction was granted to the applicant who was the plaintiff in CMCC No. 406 of 2012 restraining the respondent from unlawful utilization of the suit land which order the respondent disobeyed despite being served. This forced the applicant to go back to court on 25th April 2012 when an order was made directing the respondent to vacate the suit land pending the hearing and determination of the said case. The respondent has, however, continuously and in contempt of court disobeyed both orders. The applicant has accordingly issued and served a notice to the Attorney General of its intention to institute these proceedings. Annexed to the affidavit are *inter alia*, copies of the court order dated 25th April 2012 and issued on 17th May 2012, to which is appended a penal notice as well as a notice to Hon. Attorney General.

Although served severally, the respondent chose not to appear before this Court. It follows that the contents of the affidavits sworn by the applicant are not controverted.

In **Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828 Ibrahim, J** (as he then was) stated:

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void”.

This was the position taken by the Court of Appeal in the case of **Refrigerator & Kitchen Utensils Ltd. vs. Gulabchand Popatlal Shah & Others Civil Application No. Nai. 39 of 1990** where it was stated that it is essential for the maintenance of the rule of law and good order that the authority of and dignity of the Court be upheld at all times and that the Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors.

The procedure adopted in these proceedings is, however, unnecessary taking into account that the complaint is that the respondent disobeyed injunctive orders of the Court. Order 40 rule 3 of the Civil Procedure Rules, 2010, provides:

(1) 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.

(2) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.

(3) An application under this rule shall be made by notice of motion in the same suit.

Therefore in cases where the Court grants an injunction it is no longer mandatory that the procedure under section 5 of the Judicature Act be followed since strictly speaking the procedure under Order 40 is not for contempt but for punishment for disregarding court orders under Order 40. That however, does not bar the High Court from entertaining an application for contempt under the aforesaid section 5 of the Judicature Act.

I accordingly order that a warrant of arrest be issued forthwith for arrest of the respondent herein, **Muthoni (Wa Monicah)** for the purposes of being brought to Court to show cause why she cannot be committed to serve 6 months imprisonment for disrespecting the Court order. The applicant will have the costs of this application.

Dated at Nairobi this 9th day of October 2012

G V ODUNGA
JUDGE

Delivered in the presence of Mr. Khamati for Applicant