



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 408 OF 2017**

**ZAKAYO KWENDO AGOI.....APPLICANT**

**VERSUS**

**BENSON OCHUNGA AMBOKO.....RESPONDENT**

**RULING**

The application is dated 4<sup>th</sup> October, 2020 and is brought under Order 40 Rule 3 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act, 2010 seeking the following orders:

1. That this application be certified as urgent and heard on priority basis.
2. That the respondent herein Benson Ochunga Amboko be cited for contempt of court and be imprisoned for a period not exceeding six (6) months and/or have his property attached and sold.
3. That costs of this application be provided for.

It is based on the grounds that the applicant obtained a decree of injunction orders herein which were served upon the respondent. That the said respondent has disobeyed the said decree and continued to do all the acts that are addressed by interfering, entering and/or tiling the suit land better known as W/Bunyore/Embali/2600. That the respondent has turned more violent and has threatened to continue with his illegal farming activities dismissing the court orders as from “a kangaroo court”. That the respondent has treated this court with utter disrespect and with impunity by blatantly refusing to comply with its orders as made and served. That it is the wider interest of justice and all fairness that the orders sought are granted.

The respondent submitted orally that the land is his and he will not allow the applicant to use the same. This court has considered the application and the submissions therein. I have perused the court file and find that the applicant vide a judgment dated 8<sup>th</sup> February 2018 the applicant obtained a decree of injunction orders herein which were served upon the respondent. That the said respondent has disobeyed the said decree and continued to do all the acts that are addressed by interfering, entering and/or tiling the suit land better known as W/Bunyore/Embali/2600. The Black’s Law Dictionary (Ninth Edition) defines contempt of court 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.”*

This application is anchored on section 63 (c) of the Civil Procedure Act which provides that:-

*“ 63) In order to prevent the ends of justice from being defeated, the court may , if it is so prescribed:-*

*(c) Grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold”*

Pursuant to section 63(c) aforesaid, it is provided under order 40 Rule 3(1) of the Civil Procedure Rules that;

*“3(1) in case of disobedient 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”*

In the case of *Teachers Service Commission vs Kenya National Union of Teachers & 2 others (2013) eKLR* the court stated as follows:-

*“The reason why courts will punish for contempt of court then is to safe guard 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.”*

Contempt of court is a grave matter as it concerns the dignity of the court when law and order is threatened and the fact that liberty and fundamental rights and freedoms of the alleged contemnor are at stake. The standard of proof is higher than proof on a balance of probabilities but not as high as proof beyond reasonable doubt. In the case of **Republic vs Ahmad Abolfathi Mohammed & Another (2018) eKLR**, the Supreme Court stated as follows:

*“We are also conscious of the standard of proof in contempt matters. The standard of proof in cases of contempt of Court is well established. In the case of Mutitika v. Baharini Farm Limited [1985] KLR 229, 234 the Court of Appeal held that:*

*‘in our view, the standard of proof in contempt proceedings must be higher than proof on the 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 an offence which can be said to be quasi-criminal in nature.’*

*The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor’s conduct”*

In the instant case it is on record that the respondent was served with the court decree. Indeed he personally appeared in open court and stated that the land is his and he will not allow the applicant access. All persons upon whom a court order is served or who are aware of a court order have a duty to obey it. The only avenue available for a party who is not satisfied with an order of the court is to approach the court seeking variation or setting aside, this has not been done. There is no stay in this matter and court orders must be obeyed. I find that this application is merited and I make the following orders;

1. That the respondent herein Benson Ochunga Amboko vacates the suit land better known as W/Bunyore/Embali/2600 from the date hereof, failure of which he will be cited for contempt and be directed to pay a fine of Kshs. 50,000/= and in default, the respondent to be committed to civil jail for a period of one (1) month.
2. That costs of this application to the applicant.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 8<sup>TH</sup> DECEMBER 2020.**

**N.A. MATHEKA**

**JUDGE**