



**REPUBLIC OF KENYA**

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

**CIVIL SUIT NO.13 OF 2011**

**KIPROTICH ARAP CHEPKWONY.....PLAINTIFF**

**VERSUS**

**SIMON LANGAT.....1<sup>ST</sup> DEFENDANT**

**SAMSON MOLOTI.....2<sup>ND</sup> DEFENDANT**

**DAVID NGENO.....3<sup>RD</sup> DEFENDANT**

**CHUMEK ARAP KETER.....4<sup>TH</sup> DEFENDANT**

**RULING**

**Background**

1. By a Notice of Motion dated 7<sup>th</sup> December 2018 the plaintiff/Applicant seeks orders that the Respondents be held to be in contempt the court's ruling and orders dated 13<sup>th</sup> September 2018.
2. The application is based on the grounds stated in the Notice of Motion and is supported by the applicant's affidavit sworn on the 7<sup>th</sup> December 2018.
3. In the said affidavit the applicant depones that pursuant to the judgment dated 3<sup>rd</sup> February 2017, he applied for an eviction order and on 13<sup>th</sup> September 2018, the court issued an eviction order against the defendants.
4. The said order was executed on 27<sup>th</sup> September 2018 whereby the defendants were evicted from the disputed portion of land but they went back and erected some structures in disobedience of the court order.
5. He further depones that the defendants filed a Notice of Motion dated 28<sup>th</sup> September 2018 seeking to stay the eviction but the same was dismissed on 20<sup>th</sup> November 2018. He states that the defendants' actions are in violation of the plaintiff's rights and they have occasioned him loss and damage.
6. Despite being served with the application, the defendants have not filed any Replying Affidavit. The application is therefore unopposed.

**Issue for determination**

7. The main issue for determination is whether the Respondents should be held to be in contempt of the court orders issued on 13<sup>th</sup> September 2018.

**Analysis and Determination**

8. Black's Law Dictionary Ninth Edition) defines contempt of court as follows

*“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 for imprisonment”*

9. The rationale for contempt orders is set out in the case of **Teachers Service Commission v Kenya National Union of Teachers & 2 others (2013) eKLR** where Ndolo J observed as follows:

*“38. The reason why courts will punish for contempt of court 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”*

10. Furthermore, 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”.*

11. In the case of **Kenya Human Rights Commission V Attorney General and Another (2018) eKLR**, the Court observed as follows:

*“Article 159 of the Constitution recognizes judicial authority of the courts and tribunals established under the Constitution. Courts and tribunals exercise this authority on behalf of the people and for that reason they must not only be respected and obeyed but must also be complied with in order to enhance public confidence in the Judiciary which is vital for our Constitutional democracy. The Judiciary acts in accordance with the laws (Article 160) and exercises its authority through its judgments, decrees and orders or directions to check government power, keep it within the Constitutional stretch, hold the Legislature and Executive to account and thereby secure the rule of law, administration of justice and protection of human rights. For that reason, the authority of the courts and dignity of their processes are maintained when court orders are obeyed and respected thus courts become effective in the discharge of their Constitutional mandate...*

*It is therefore a fundamental rule of law that court orders be obeyed and where an individual is enjoined by an order of the court to do or refrain from a particular act, he has a duty to carry out that order. The court has a duty to commit that individual for contempt of its orders where he deliberately fails to carry out such orders. See Louis Ezekiel Hart V Chief George1 Ezekiel Hart SC 52/2983 2<sup>nd</sup> February 1990).”*

*...The fact that the power to punish for contempt is inherent and not granted by statute follows the recognition by the Constitution in Article 159 that judicial authority is derived from the people and vests in and is exercised by courts and tribunals established by or under the Constitution”*

12. Having carefully considered the pleadings, the application and supporting affidavit, as well as the relevant authorities and I am satisfied that the defendants are guilty of contempt of the court order dated 13<sup>th</sup> September 2018.

13. Accordingly, I invoke the powers conferred on the court under Article 159 of the Constitution and direct that the Respondents be arrested and brought to court to show cause why they should not be committed to civil jail.

14. The costs of this application shall be paid by the defendants.

**Dated, signed and delivered at Kericho this 31<sup>st</sup> day of January, 2019.**

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**J. M ONYANGO**

**JUDGE**

**In the presence of:**

1. Plaintiff/Applicant present in person
2. No appearance for the Respondent
3. Court assistant – Makori