



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT KERICHO

ELC CASE NO 23 OF 2018

GRACE CHEMUTAI KOECHPLAINTIFF/APPLICANT

VERSUS

FRANCIS KIPLANGAT CHEBIROR.....1ST DEFENDANT/RESPONDENT

KIPKURUI WILLIAM KIMETTO.....2ND DEFENDANT/RESPONDENT

ROBERT KIPKURUI TANUI.....3RD DEFENDANT/RESPONDENT

RULING

Introduction

1. By a Notice of Motion dated 25th July, 2018 brought pursuant to Order 51 of the Civil Procedure Rules, Section 1A, 1B and 3A of the Civil Procedure Act and Section 4(1) of the Contempt of Court Act Cap 46 of the Laws of Kenya, 2016 the Plaintiff seeks the following orders:

That the Respondents be held to be in contempt of court's orders issued on 25/6/2018.

b. That the cost of the application be provided for.

2. The application is premised on the grounds stated on the face of the application and the Applicant's supporting affidavit sworn on the 25th May 2018.

3. A brief background of the case is that the Applicant filed an Application dated 13th March 2018, seeking orders of temporary injunction restraining the respondents herein from encroaching, interfering with, cultivating, erecting structures thereon and or doing any other act which is prejudicial to the plaintiff's proprietary interests in land parcel No. **KERICHO/KAPSUSER/3325** pending the hearing and the determination of the suit herein. By its Ruling dated 25th June 2018 the court issued the following orders;

“That the status quo be maintained pending the hearing and determination of the suit herein. For the avoidance of doubt, the status quo means that neither the plaintiff nor the defendants should use or occupy the suit property before this matter is heard and determined.

Should any of the parties wish to remove their belongings or harvest crops on the suit property, they shall do so under supervision of the OCS Kapsoit Police Station”

4. In her affidavit the applicant depones that the Respondent has on several occasions disobeyed the court order and continued with the acts of contempt by digging up holes and connecting electricity to the suit land. He has planted sugarcane in between the maize plantation and started demolishing the small kitchen on the suit land. The Applicant depones that she reported the incident to the OCS Kapsoit Police Station but she did not get any assistance.

5. The application is opposed by the 1st and 2nd defendants through their Grounds of Opposition filed on 27th August 2018. The 3rd defendant did not file any Replying affidavit or Grounds of Opposition.

6. The application was canvassed by way of written submissions and only the applicant's counsel filed their submissions.

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 25th June 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 or 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. The importance of personal service in contempt proceedings which are quasi-criminal in nature need not be overemphasized.

11. In **Basil Criticos V A.G (2012) eKLR** Lenaola J (as he then was) held as follows:

“The law has changed and as it stands today, knowledge supersedes personal service... where a party clearly acts and shows that he had knowledge of a court order, the strict requirement that personal service must be proved is rendered unnecessary”

12. In the instant case the parties were present when the order was made and they cannot claim that they were not served.

13. In **Republic vs. The Kenya School of Law & Another Miscellaneous Application No. 58 of 2014**, the Court stated:

“Court orders, it must be appreciated are serious matters that ought not to be evaded by legal ingenuity or innovations. By deliberately interpreting Court orders with a view to evading or avoiding their implementation one can only be deemed to be contemptuous of the Court. Where a party is for some reason unable to properly understand the Court order one ought to come back to Court for interpretation or clarification.”

14. 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”.

15. I have carefully considered the pleadings, application, affidavit, counsel’s submissions and relevant authorities and I have no doubt in my mind that the defendants are guilty of contempt of the court order dated 25th June 2018. Even though this application was filed in June 2018 under inter alia, the Contempt of Court Act 2016, I have carefully avoided any reference to the said Act as I am aware that it was recently declared unconstitutional about two months ago the case of **Kenya Human Rights Commission V Attorney General & Another (2018) eKLR**. I am however of the view that that the courts still have the inherent powers under section 3A of the Civil Procedure Act to make such orders as may be necessary for the ends of justice and to prevent the abuse of the process of the court.

16. Accordingly, I direct that the 3rd Respondent be arrested and brought to court to show cause why he should not be committed to civil jail.

17. The Plaintiff shall have the costs of this application which shall be paid by the 3rd Respondent.

Dated, signed and delivered at Kericho this 17th day of January, 2019.

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J.M ONYANGO

JUDGE

In the presence of:

1. Miss Sitati for the Applicant.
2. No appearance for the Respondents
3. Court Assistant: Makori