



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

ELC CASE NO. 37 OF 2018

LEONARD TONU (Suing as personal representative of the late

DANIEL KIPLANGAT RUTO).....PLAINTIFF

VERSUS

KIPKEMOI RUTTO.....1ST DEFENDANT

SARAH CHEPKIRUI RUTTO.....2ND DEFENDANT

RULING

Introduction

1. What is before me is a Notice of Motion dated 13th October 2018 brought under the provisions of Order 51 rule 1 of the Civil Procedure Rules, Section 5 (1) of the Judicature Act, Section 3 of the Civil Procedure Act and Order 52 of the Rules of the Supreme Court of England. The main order sought by the Plaintiff/Applicant is that the Respondents be committed to civil jail for contempt of court for disobeying the express orders of the this honourable court issued on 27th June 2018.

2. The application is premised on the grounds stated on the face of the Notice of Motion and the supporting affidavit of Leonard Tonui sworn on the 13th October 2018.

3. In the said affidavit the Applicant depones that he obtained an order of injunction restraining the Defendants by themselves, their servants, agents, employees or otherwise from entering, erecting a fence, constructing structures, resurveying, transferring, interfering or doing any act that is prejudicial to the Plaintiff's proprietary interest in L.R No. KERICHO/NYMANAGA/108 pending the hearing and determination of the main suit.

4. He depones that despite being served with the said orders on 14th July 2018 at their home in Chemabei Nyamanga village, Kapsikiara location in Kericho county, the defendants have continued to trespass on the suit land by ploughing and engaging in activities that are prejudicial to the Plaintiff's proprietary interest in the said land..

5. Despite being served with the application, the Defendants did not file any response and it is therefore unopposed.

Issue for determination

6. The only issue for determination is whether the Defendants should be held to be in contempt of the court order dated 27th June 2018.

Analysis and determination

7. 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”

8. 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”

9. 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”.

10. In order to make a case for civil contempt the Applicant must prove certain elements which were set out in the case of **Cecil Miller V Jackson Njeru (2017)eKLR**. The court cited the book entitled “Contempt in Modern New Zealand which sets out the elements of Civil contempt as follows:

- a) *The terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant.*
- b) *The defendant had knowledge of or proper notice of the terms of the order.*
- c) *The defendant acted in breach of the terms of the order.*
- d) *The defendant’s conduct was deliberate.*

11. In the instant case, I am satisfied that the above conditions have been met. The order is stated in clear and unambiguous terms and it contains a penal notice. I have perused the file and there is a detailed Affidavit of Service sworn by David Obara on 30th July 2018 showing that the Defendants were served with the said order. The Applicant has annexed copies of photographs showing that the Defendants ploughed the suit property in contravention of the court order.

12. For the foregoing reasons, I find the Respondents guilty of contempt of court and I convict them accordingly. The matter will be mentioned within 30 days for mitigation and sentencing.

Dated, signed and delivered at Kericho this 21st day of February, 2019.

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J.M ONYANGO

JUDGE

In the presence of:

1. Miss Sitati for the Plaintiff/Applicant
2. Defendants absent
3. Court Assistant - Rotich