

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

ENVIRONMENT AND LAND CASE No. 103 OF 2018

JOEL KIBET KOECH.....PLAINTIFF

VERSUS

DANIEL KIPKEMOI RUTO.....DEFENDANT

RULING

1. By Notice of Motion dated 5th April 2018, the plaintiff sought an order that the defendant be committed to jail for a period not exceeding six months for disobeying the order of this court made on 6th March 2018 and further that he be ordered to remove building materials blocking the plaintiff's business premises on the suit property.

2. The application was supported by an affidavit sworn by the plaintiff. He deposed that the aforesaid order was served upon the defendant on 7th March 2018 and that despite such service, the defendant went ahead and deposited building sand at the front of the plaintiff's business premises located suit property, thereby paralyzing a hotel business that was being conducted therein. He annexed an affidavit of service as well as photographs said to depict the defendant's aforesaid activities.

3. The defendant opposed the application through a replying affidavit and a further affidavit. He stated that he deposited the building materials on a road reserve some time in December 2017 prior to the issuance of this court's order and that he later removed them when the county government started constructing a drainage to stem flooding during rainy seasons. In a further affidavit, the plaintiff confirmed that the materials were indeed removed.

4. The application was heard by way of written submissions. I have considered the application, the affidavits filed as well as the submissions. Contempt of court is a serious matter since it goes to the very root of rule of law and further since the liberty of the alleged contemnor is at stake. It is for that reason that contempt must be proven on a standard higher than a balance of probabilities.

5. On 6th March 2018, this court made an order restraining the defendant and his agents or servants from among others tampering with land parcel number Rongai/Rongai Block 2/102 pending inter parte hearing of an application for injunction. There is no dispute that the defendant was served with the order. According to the plaintiff, the defendant breached the order by depositing building sand at the front of the plaintiff's business premises located suit property, thereby paralyzing a hotel business that was being conducted therein. The plaintiff does not state the date when the sand was deposited. Such a date is crucial since if the sand was deposited before the order was made as is alleged by the defendant, there would be no contempt. I am therefore unable to find, as the plaintiff has invited me to do, that the defendant acted in breach of this court's order. I further note that the said sand has since been removed.

6. In view of the foregoing, I find no merit in plaintiff's Notice of Motion dated 5th April 2018. It is hereby dismissed with costs to the defendant. Parties are encouraged to urgently prepare the main suit for hearing.

7. Delay in delivery of this ruling, which was occasioned by the fact that I proceeded on medical leave, is regretted.

Dated, signed and delivered in open court at Nakuru this 30th day of April 2019.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Waiganjo holding brief for Mr Motanya for the plaintiff/applicant

No appearance for the defendant/respondent

Court Assistants: Beatrice & Lotkomoi