



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

ELC CASE NO. 80 OF 2013

RICHARD CHERUIYOT LANGAT.....PLAINTIFF

VERSUS

JOSEPH KIBISIO KILELE -*Suing as the legal representative*

*of the estate of* TAPNYOBI MAIGA.....1<sup>ST</sup>DEFENDANT

LAND REGISTRAR BOMET COUNTY.....2<sup>ND</sup> DEFENDANT

RULING

### **Introduction**

1. This ruling is in respect of the Plaintiff's Notice of Motion dated 6<sup>th</sup> March 2019 brought pursuant to section 6(c), 27(k) of the Contempt of Court Act No. 46 of 2016, section 3A of the Civil Procedure Act and Order 40 Rule 3(1) of the Civil Procedure Rules. The application seeks orders that the 1<sup>st</sup> Joseph Kibisio Kilele be cited for contempt of court for disobeying this honourable court's orders and that the Respondents be compelled to re-construct the destroyed premises. The said application is based on the grounds stated on the face of the Notice of Motion and the Affidavit of Richard Cheruiyot Langat, the Plaintiff herein sworn on the 6<sup>th</sup> March 2019 and Supplementary Affidavit sworn on the 15<sup>th</sup> March 2019. The long and short of it is that the Applicant avers that the Respondent has contravened the order issued on 7<sup>th</sup> December 2017 whereby the parties were to maintain the status quo. The said order clarified that the status quo meant the following:

*“That Wesley Sigei do remain in occupation of the suit property under licence from the Plaintiff, and that no further developments or dealings shall take place on the suit property pending the hearing and determination of the main suit”*

2. The Applicant avers that on the night of 24.2.2019 the Defendant destroyed the Plaintiff's house on land parcel no. KERICHO/SILIBWET/1428 and thereafter resisted any attempts by the said Wesley Sigei to re-enter the said premises. In his Supplementary affidavit, he avers that matter was reported to Bomet Police station whereupon the Respondent's nephew Kiplangat Bett was arrested.

3. The application is opposed by the 1<sup>st</sup> Respondent through his Replying affidavit sworn on 8<sup>th</sup> March 2019. In the said affidavit he avers that he was present in court when the order for status quo was made and he denies having disobeyed it. He avers that the allegations made against him are baseless and malicious. He punches holes in the Applicant's affidavit and avers that the application is merely intended to delay the hearing of this suit.

4. The application was argued orally and both counsel relied on their respective client's' affidavits. Counsel for the Applicant submitted that the motive behind the destruction of the suit premises was that the 1<sup>st</sup> Respondent was unhappy that the Applicant was benefitting from the suit premises. He urged the court to find the 1<sup>st</sup> Respondent guilty of contempt of disobeying the court order.

5. On her part counsel for the 1<sup>st</sup> Respondent submitted that the application was an abuse of the process of the court and was a waste of the court's time. She took issue with the fact that the Applicant had sworn to facts which ideally ought to have been deposed by the occupant of the structure that was destroyed. She submitted that the averments in the Applicant's affidavit did not disclose any offence by the 1<sup>st</sup> Respondent. She submitted that even though one Kiplangat Bett had been arrested in connection with the offence of breaking and stealing, the Applicant had failed to link this offence to the 1<sup>st</sup> Respondent. She submitted that the Applicant had failed to prove the offence of contempt against the 1<sup>st</sup> Respondent and the application ought to be dismissed with costs.

**Issue for determination.**

6. The main issue for determination is whether the Respondents should be held to be in contempt of the court orders issued on 7<sup>th</sup> December 2017.

### Analysis and Determination

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”*

7. 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”*

8. Furthermore, in **Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828Ibrahim, 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”.*

9. 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”*

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)**. The court cited the book entitled **“Contempt in Modern New Zealand** which sets out the elements of Civil contempt as follows:

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

11. In the instant case, the Applicant has satisfied the first two elements. However, regarding the third and fourth elements, the material placed before the court does not lead me to the conclusion that the 1<sup>st</sup> Respondent breached the terms of the court order. On the contrary, the evidence shows that the person who was arrested on suspicion of having committed the offence of breaking and stealing is one Kiplangat Bett who is the 1<sup>st</sup> Respondent's nephew. No evidence has been presented to show that the said Kiplangat Bett was acting jointly with the 1<sup>st</sup> Respondent.

12. Having carefully considered the application, affidavits, rival submissions as well as the relevant authorities I have come to the conclusion that the application lacks merit and I hereby dismiss it.

13. However, since it is not in dispute that the suit premises were destroyed to the detriment of the Plaintiff's tenant, Wesley Sigei, I direct that the said Wesley be allowed to reconstruct and re-occupy the premises pending the hearing and determination of this suit.

14. The costs of this application shall be in the cause.

**Dated, signed and delivered at Kericho this 24<sup>th</sup> day of April 2019.**

**J.M ONYANGO**

**JUDGE**

**In the presence of**

1. Mr. Rotich for the Plaintiff/Applicant

2. Miss B. Koech for the Defendant/Respondent

3. Court Assistant: Mr. Rotich