



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 227 OF 2014

JEDROM BUILDING AND CIVIL ENGINEERING LTD.....PLAINTIFF/APPLICANT

VERSUS

COUNTY GOVERNMENT OF UASIN GISHU.....1ST DEFENDANT/RESPONDENT

NELSON MARITIM.....2ND DEFENDANT/RESPONDENT

RULING

The application before court is dated **5th March, 2018**. The plaintiff seeks for orders that the defendant, its servants and or agents be restrained from further destruction of the plaintiff/applicant's property in parcel of land No. ELDORET MUNICIPALITY BLOCK 10/2052 or in any other way trespassing and interfering with the plaintiff/applicant's occupation and use of his parcel of land No. ELDORET MUNICIPALITY BLOCK 10/2052 pending the hearing and determination of this suit.

The defendant/1st respondent and 2nd respondent be found in contempt of court and punished appropriately by attachment of the 1st respondent's property and by committing the 2nd respondent to civil jail.

Pending hearing and determination of the case, OCS, Kapsoya Police Station be and directed to ensure that the orders by this Honourable court are obeyed and law and order is maintained. The plaintiff prays for Costs of this application.

The application is based on grounds that on 30th June 2014, this honourable court issued an order restraining the defendant, its servants and or agents from trespassing, interfering with the plaintiff/applicant's occupation and the parcel of land registration No. ELDORET MUNICIPALITY BLOCK 10/2052.

The defendant/1st respondent and 2nd respondent are fully aware of these orders.

However, on 2nd March 2018, the defendant and 2nd respondent caused destruction of the plaintiff/applicant property despite the existence of this suit and orders preventing him from doing so.

As a consequence of the destruction, the plaintiff/applicant has suffered greatly in terms of financial and emotional loss. The respondents and or their servants' and or agents' conduct is fragrant belittling to the court and tends to undermine the authority and dignity of this honourable court and therefore should not be condoned.

The gist of the supporting affidavit of William Kipkorir Kipkurui is that despite a court order issued by this court which they were aware, the defendants went ahead and destroyed the plaintiff's property. The defendants had earlier destroyed the property and fined Kshs.500,000 which they paid after one year and continued to destroy the plaintiff's property.

I have looked at the affidavit of William Kipkorir Kipkurui, the supplementary affidavit of Anthony Lumwachi Memba and Keneth Kimutai Limo and I am satisfied that the property was destroyed by the County Government of Uasin Gishu.

Anthony Lumwachi Memba carries on business of a food kiosk on the suit land. On 2nd March, 2018 around 1.00 a.m., he was spending the night in the kiosk when he heard a commotion. He went out and was ordered to sit down. He saw a wheel loader with green and white number plates registration Number KBZ 932D. The wheel loader destroyed garages, car wash and a hotel. He recognized the wheel loader belonging to County Government.

Kenneth Kimutai Limo states that he saw the wheel loader destroy the premises. Nelson Maritim, the county Executive Committee member

Lands, Housing and Physical Planning states that the County Attorney was not served with the order dated 30th June, 2014. He further states that the application dated 29th September, 2014 was already determined on 19th August, 2016. The respondent complied and paid Kshs.500,000. The respondent denied destroying the buildings.

I have considered the application, affidavits on record and do find that there is sufficient evidence that the defendant went back to the plaintiff's premises and destroyed structures despite the existence of a court order which was in their knowledge. The defendant was aware of the court order but still demolished the structures. The defendant is a repeat offender in contempt as had destroyed the plaintiff's structures despite the existence of a court order and was fined kshs.500,000.

The law on contempt is clear, thus;

In Nthabiseng Pheko v Ekurhuleni Metropolitan Municipality & another CCT 19/11(75/2015), *Nkabinde, J* observed that: -

“The rule of law, a foundational value of the constitution, requires that the dignity and authority of the courts be upheld. This is crucial, as the capacity of courts to carry out their functions depends upon it. As the constitution commands, orders and decisions issued by a court bind all persons to whom and organs of state to which they apply, and no person or organ of state may interfere in any matter, with the functioning of the courts. It follows from this that disobedience towards courts orders or decisions risks rendering our courts impotent and judicial authority a mere mockery. The effectiveness of court orders or decisions is substantially determined by the assurance that they will be enforced.”

In the case of Canadian Metal Co. Ltd v Canadian Broadcasting Corp(N0.2) [1975] 48 D.L.R (30), the court stated that;

“To allow court orders to be disobeyed would be to tread the road toward anarchy. If orders of the court can be treated with disrespect, the whole administration of justice is brought into scorn... if the remedies that the courts grant to correct... wrongs can be ignored, then there will be nothing left for each person but to take the law into his own hands. Loss of respect for the courts will quickly result into the destruction of our society.”

Courts therefore punish for contempt to insulate its processes for purposes of compliance so that the rule of law and administration of justice are not undermined. Without this power or where it is limited or diminished, the court is left helpless and its decisions would mean nothing. This ultimately erodes public confidence in the courts; endangers the rule of law, administration of justice and more importantly, development of society.

Contempt of court rests on the power of the court to uphold its dignity and process. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect

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 to refrain from doing 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.

in Hon. Martin Nyaga Wambora and Another v Justus Kariuki Mate & Another [2014] eKLR, the Court stated the duty to obey the law by all individuals and institutions is cardinal in the maintenance of rule law and administration of justice.

It is therefore clear that the importance of the judiciary in the maintenance of constitutional democracy cannot be overemphasized. In order to achieve this constitutional mandate, the judiciary should enforce its decisions and punish those who disobey, disrespect or violate its processes.

The defendants / respondents have no respect for this court and rule of law, but the court has teeth to bite and is not a toothless bulldog and therefore, the defendants/ respondents have to be punished to deter them from disobeying court orders.

I do order that the 1st defendant/ respondent pay a fine of Kshs.2,000,000 for repeatedly being in contempt of court. The 2nd respondent is hereby imprisoned for a term of 3 months with an option of a fine of Kshs.300,000. Orders accordingly.

Dated and delivered at Eldoret this 25th day of July, 2019.

A. OMBWAYO

JUDGE