



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 492 OF 2013

BONIFACE ODERO SIMANI.....PLAINTIFF

VERSUS

HERMAN SHIBITI.....1ST DEFENDANT

ENOCK MUSIEGA MUNYETI.....2ND DEFENDANT

DAVID AMIKOLAS SHIBITI.....3RD DEFENDANT

CHIEF LAND REGISTRAR, UASIN GISHU COUNTY.....4TH DEFENDANT

RULING

The application before court is dated 3rd November, 2017 and seeks orders that the plaintiff/respondent be committed to jail for disobeying a court order made on 30th June, 2014. Moreover, that **Robert Onduko Omenge** and **Paul Mwangi of Saddabri Auctioneers** be jailed for disobeying the court order made on 30th June, 2014.

That vide the court orders of 30th day of June, 2014, the plaintiff/respondent herein was prohibited from interfering with the 2nd defendant's possession of the suit land Eldoret Municipality Block 21 (King'ong'o)/4697 unless with the authority of the 2nd defendant/applicant.

That the 2nd defendant/applicant has neither authorized and/or permitted the respondent nor one Robert Onduko Omenge of FEMFA Auctioneers and one Paul Mwangi of Saddabri Auctioneers nor even the unknown hooligans to demolish the structure on the said land parcel.

That a report of the destructive activities has been made at Baharini Police Station. That the court orders of 30th day of June, 2014 have been grossly violated by the plaintiff/respondent herein. The application is based on grounds that the plaintiff was served with the court order but went ahead to disobey it.

In the supporting affidavit of Enock Musiega Munyeti, the applicant states that the plaintiff/respondent hired Robert Onduko Omenge and Paul Mwangi of FEMFA Auctioneers plus other hooligans and destroyed the fence, ablution blocks and other structures on the suit property. The applicant has annexed photographs of the destruction.

The application is further supported by the affidavit of Eric Alukwe Khatete, a caretaker of the applicant. He states that the plaintiff/respondent went to the suit property with the persons namely Robert Onduko Omenge and Paul Mwangi and other hooligans and destroyed the fence and other structures. This was on 1st November, 2017. The plaintiff supervised the destruction and drove away with the two other men.

The plaintiff/respondent denies having disobeyed the court order as he leant of the court order when he was served on 3rd November, 2017. The order was not served upon him. He was not in court when the order was made. The same applies to his advocate. The respondent denies there having been any structure on the suit land.

In a supplementary affidavit of Enock Musiega, he states that the plaintiff has further constructed on the suit property a permanent fence.

In a further affidavit by Boniface Odero Simani, it is stated that the church and school have been in existence before the suit was filed. He states that the school and church are on land reference number Eldoret Municipality Block 21(King'ong'o) 4698 and not 4697. The fence

has existed even before the suit was filed.

I have considered the application, supporting affidavit, replying affidavit and the further affidavit and do find that the following issues are ripe for determination:

1. *Whether there was a court order.*
2. *Whether it was served or whether the respondent came to know of the same.*
3. *Whether it was disobeyed.*

WHETHER THERE WAS A COURT ORDER

On 30th June 2014, this honourable court made the following order:

- (i) **The status quo of the land parcel number Eldoret Municipality Block 21 (King'ong'o)/4697 be maintained, save for the completion of the ablution block thereon.**
- (ii) **The 2nd defendant be and is hereby allowed to continue utilizing the suit land pending the hearing and disposal of this suit.**
- (iii) **The plaintiff be and is hereby prohibited from interfering with the 2nd defendant's possession of the suit land unless with the authority of the 2nd defendant.**
- (iv) **An order of inhibition be and is hereby issued, inhibiting the registration of any disposition in the register of land parcel number Eldoret Municipality Block 21 (King'ong'o)/4697.**
- (v) **The cost of the application shall be in the cause.**

The application dated 27th January 2014 was heard by the court on 25th March, 2014 and ruling given on 30th June, 2014. The order was issued on 22nd July, 2014. The ruling was delivered in the presence of the plaintiff's counsel and the 2nd defendant's counsel. Since the ruling was delivered in the presence of the counsel for the parties, the plaintiff is deemed to have been aware of the ruling and order of the court.

On whether the order was disobeyed, I do find the evidence of Mr. Khatete, who was staying on the land with the permission of the 2nd defendant cogent that the plaintiff sent two men to destroy the 2nd defendant's structures and they were actually destroyed and that the plaintiff was on site during the destruction. The photographs tell of the wanton destruction that was carried on by the plaintiff and the hooligans that visited the site.

Crucial to this application is the valuation report by Highland Valuers Ltd dated **19th June, 2014** which showed that the property was improved with a semi-permanent residential house and an incomplete permanent external ablution block. The semi-permanent structure was made of GCI sheets on timber posts as the roof and walls. The floor was made of concrete with cement screened. The doors and windows were burglar proofed steel casement type. It comprised of 2 rooms. The ablution block was made of burnt clay bricks rendered externally and plastered internally. Timber doors. The property was fenced with chain-link on eucalyptus posts and cedar. It had 2 pit latrines and one bathroom. It is on the basis of this valuation that the court gave orders of status quo.

On 6th May, 2019, the County Land Registrar visited the suit property in compliance of court order made on 18th February, 2019 in Eldoret ELC No. 492 of 2013 to ascertain status quo. The Registrar FOUND that there was no development on the parcel and the same was a playground by pupils of Comodo School, Eldoret. There was a stone walled fence with a steel gate. There was also an iron sheet fence.

It is evident that the ablution block plus the semi-permanent structure were demolished. Mr. Khatete's statement that the same were demolished by hired goons supervised by the plaintiff is accepted by this court as truth because it was not seriously challenged in REPLY.

What is contempt of court? According to the Black's Law Dictionary;

“Contempt is a disregard of, disobedience to, the rules or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior or insolvent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body”

In the case of **Econet wireless Kenya Limited Vs minister for information & Communication of Kenya & Another**, the court stated as follows;

“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 the 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.”

Again, in the case of **Teachers Service Commission Vs Kenya National Union of Teachers & 2 others (2013)**, *eKLR Ndolo J* observed that;

“The reasons why courts will punish for contempt of court then 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 safeguard the rule of law.”

The judge went further to state;

“I am of the same persuasion that the reason why power is vested in courts to punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. The law of contempt has evolved over time in order to maintain the supremacy of the law and the respect for law and the respect for law and order. As it was in the time of Chief Justice Mckean in 1786 so it is today that courts have a duty to ensure that Citizens bend to the law and not vice versa. Indeed, if respect for law and order never existed, life in society would be but short, brutish and nasty. It is the supremacy of the law and the ultimate administration of justice that is usually under challenge when contempt of court is committed. This is so because, a party who obtains an order from court must be certain that the order will be obeyed by those to whom it is directed. As such, the obedience of a court order is fundamental to the administration of justice and the rule of law. A court order once issued binds all and sundry, the mighty and the lowly equally, without exception. An order is meant to be obeyed and not otherwise.”

The statutory basis of contempt of court in so far as the High court is concerned is section 5 of the Judicature Act. Section 63 (c) of the Civil Procedure Act provides that a disobedience of an order of a temporary injunction will attract punishment in the form of imprisonment or attachment and sale of the contemnor’s property.

Section 5 (l) of the Judicature Act provides as follows;

“The High court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.”

I do find that this court just like the High Court has the power to punish for contempt and that the 2nd defendant/applicant has demonstrated that the plaintiff is in contempt of court order dated 30th June, 2014 and the plaintiff is hereby imprisoned for 2 months in jail with an option of a fine of Kshs.100,000. Orders accordingly.

Dated and delivered at Eldoret this 9th day of August, 2019.

A. OMBWAYO

JUDGE