



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CIVIL CASE NO.131 OF 2019**

**MAGI HOLDINGS LIMITED.....PLAINTIFF**

**VERSUS**

**JESUS MANIFESTATION CHURCH.....1<sup>ST</sup> DEFENDANT**

**PRINCE WILLIAM MWANGANGI.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. This is the notice of motion dated 6<sup>th</sup> June 2019 brought under rule 18, 3 of the Civil Procedure (Amendment No. 2) Rules 2012 No. 2208 (L.8) Senior Courts of England & Wales County courts, England and Wales ) and the inherent powers and jurisdiction of this honourable court.

2. It seeks orders

**(1) Spent.**

**(2) That an order of this honourable court do issue compelling the 2<sup>nd</sup> defendant to comply with the court order given on 30<sup>th</sup> May 2019 in presence of 2<sup>nd</sup> defendant's advocate Mr. Lusweti and issued on 31<sup>st</sup> May 2019, duly served upon them on 31<sup>st</sup> May, 2019.**

**(3) That an order of this honourable court citing for contempt the 2<sup>nd</sup> defendant for disobeying the court order given on 30<sup>th</sup> May, 2019 in presence of 2<sup>nd</sup> defendant's advocate M.r Lusweti and issued on 31<sup>st</sup> May, 2019 duly served upon them on 31<sup>st</sup> May 2019.**

**(4) That an order of this honourable court be issued directing that; the 2<sup>nd</sup> defendant herein (namely: PRINCE WILLIAM MWANGANGI) (the contemnor) be cited for contempt of valid court orders and be committed to civil jail for a period of 6 months or such period as deemed just and sufficient by this honourable court and such further orders be made as the court may deem necessary for contempt of court by disobeying this honourable court orders, facts which are well within his knowledge.**

**(5) That the said contemnor, be ordered to comply with the court orders given on 30<sup>th</sup> May 2019 particularly order number 2, which directed that No further construction to go”.**

**(6) That the 2<sup>nd</sup> defendant be ordered to stop holding church services at the site pending hearing and determination of the application dated 10<sup>th</sup> April 2019.**

**(7) That this honourable court do impose a mandatory penalty to be paid by the 2<sup>nd</sup> defendant (Prince William Mwangangi). The officer commanding Kasarani police and/or the relevant police station with the requisite territorial jurisdiction do execute the orders herein.**

**(8) Costs of this application be provided for.**

3. The grounds are on the face of the application and are set out in paragraphs (1) to (6).

4. The application is supported by the affidavit of Elizabeth Wanjiku Nguchuga.

5. The application is opposed there is a replying affidavit sworn by Prince William Mwangangi the 2<sup>nd</sup> defendant/respondent on the 1<sup>st</sup> July 2019.

6. The application was canvassed by oral submissions.

7. It is the plaintiff/applicant's submissions that this court issued orders stopping further construction on 30<sup>th</sup> May 2019. Service on the defendant's/respondent's was effected on 31<sup>st</sup> May 2019. They have intentionally and knowingly disobeyed the court orders; that there is now complete structure.

8. The defendant/respondents on the other hand submit that the construction was completed before the court orders were issued. They pray that the application be dismissed.

9. I have considered the notice of motion, the affidavit in support and the annexures. I have also considered the replying affidavit and the annexures, the oral submissions made on behalf of the parties and the authorities cited.

10. The issues for determination are:-

(i) *Whether or not the alleged contemnor was served with the said court orders.*

(ii) *Whether or not he is guilty of disobedience of the said orders.*

(iii) *Who should bear costs?*

11. I have gone through the affidavit sworn by Samuel Maina Wamugi, process server sworn on the 4<sup>th</sup> May 2019. It is clear that he did not serve the 2<sup>nd</sup> defendant/respondent personally. He told the court that he served the firm of M/s Lusweti & Nubutula & Co. Advocates on 31<sup>st</sup> May 2019.

12. In the case of **Justus Kariuki Mate & Another vs Martin Nyaga Wambora Civil Appeal No. 24 of 2014** the Court of Appeal held that:-

*“It is important that the court satisfies itself beyond any shadow of doubt that the person alleged to be in contempt committed the act complained of with full knowledge of notice of the existence of the order of the court forbidding it. The threshold is quite high as it involves possible deprivation of a person's liberty”.*

It was therefore necessary for the plaintiff /applicant to serve the contemnor.

13. I have gone through the affidavit of Judith Musibi, process server sworn on the 17<sup>th</sup> May 2019. She confirms that by 16<sup>th</sup> May 2019 the construction was ongoing. The 2<sup>nd</sup> defendant/respondent has annexed photographs showing the complete structure.

14. Another issue for consideration is whether the contemnor is guilty of disobeying a court order. The standard of proof in matters of contempt is well settled. The court of Appeal in **Civil Appeal No. 39 of 1990 Refrigeration & Kitchen Utensils Ltd vs Gulabchand Popittal Shah & Others** in approving the standard of proof in contempt cases as set out in the Case of **Gatharu Mitika & Others vs Baharini Farm Ltd Civil Appeal No. 24 of 1995** held:-

*“that in case of alleged contempt the breach for which the contemnor is cited must not only be precisely defined but proved on standard which is higher than on a proof or a balance of probabilities but not as high as proof beyond reasonable doubt. This is because the charge of contempt of court is an offence of criminal character and a party may lose his liberty”.*

15. It would therefore mean before a court cites a contemnor for contempt there must be sufficient evidence to prove that he/she has knowledge of court order and has wilfully disobeyed it. It was incumbent upon the plaintiff/applicant to prove that the acts were committed by the contmnor herein.

16. All in all I find that the plaintiff/applicant has failed to discharge her burden as required by law. I find that the application herein lacks merit and the same is dismissed. The costs do abide the outcome of the main suit.

It is so ordered.

**Dated, signed and delivered in Nairobi on this 17<sup>th</sup> day of October 2019.**

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**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Kenga for Jaoko for the Plaintiff

Mr. Lusweti for the Defendant

Kajuju - court Assistant