



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

MISCELLANEOUS CIVIL APPLICATION NO. 10 OF 2017

PAUL KIPLANGAT KETER.....APPLICANT

VERSUS

JOHN KOECH.....RESPONDENT

RULING

Introduction

1. By a Notice of Motion dated 27th March, 2017 brought pursuant to the provisions of section 3A and section 63 of the Civil Procedure Act as well as the Judicature Act, the Applicant seeks the following prayers;

- a) *That the applicant be granted leave to file and serve contempt proceedings.*
- b) *That the Honourable court do cite the Respondent for contempt of Court in respect of court orders of eviction issued by the Sotik Principal Magistrates Court in Civil Case No. 191 of 2012.*
- c) *Any other order that may be in the interest of justice.*
- d) *That costs be provided for*

2. The application is predicated upon the Grounds stated in the Notice of Motion and Applicant's supporting affidavit sworn on the 16th February, 2017.

3. In brief the Applicant who is the registered proprietor of land parcel number Kericho/Kipsonol/695 filed suit vide Sotik PMCC No.191 of 2012 seeking an order to evict the Defendant from the suit property. The Respondent failed to enter Appearance and the suit was set down for Formal Proof. Judgment was subsequently entered against the Respondent on 26th June, 2013. An eviction order was issued against the Defendant on 15th November, 2013. The Defendant did not appeal against the said judgment.

4. In his supporting Affidavit, the Applicant avers that the O.C.S Sotik Police Station enforced the eviction order by evicting the Defendant from the suit property in accordance with the said order. However, in November 2016 the Respondent returned to the suit property, destroyed the fence and deposited some building materials thereon with the intention of constructing a house. The applicant further depones that the Respondent is therefore in contravention of the court order.

5. Despite being served with the application and Hearing Notice, the Respondent neither filed a response

nor attended court.

Issues for Determination

6. There are only two issues for determination;

1. Whether the Respondent is in contempt of the eviction court order dated 15th November 2013
2. Whether the applicant is entitled to the orders sought

Analysis and Determination

7. In order to punish a party for contempt of court it is important to establish whether a party has actually committed the act complained of.

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 or imprisonment”

8. Section 4 of the Contempt of Court Act, No. 46 of 2016 provides as follows:

Contempt of Court includes:

(a) Civil contempt which means willful disobedience of any judgment, decree, direction, order or other process of a court or willful breach of an undertaking given to a court

9. On the first issue, from the material placed before me, it is clear that the plaintiff obtained an eviction against the Respondent in respect of land parcel number Kericho /Kipsono 1965. The said order was duly executed by the O.C.S Sotik Police Station. In spite of this, the Respondent returned to the suit property and intends to commence construction of a permanent structure contrary to the court order.

10. No explanation has been offered as to why the court order was disobeyed as the Respondent has not filed any Replying Affidavit. The plaintiff's averments are therefore uncontroverted. From the foregoing, I am satisfied that the defendant disobeyed the court order and is in contempt thereof.

11. On the second issue, section 63 of the Civil Procedure Act provides as follows:

“In order to prevent the ends of justice from being defeated, the court may, if it so desires

(c) Grant a temporary injunction and in case of disobedience, commit the person guilty thereof to prison and order that his property be attached and sold”

12. 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”.

13. Furthermore, in the case of **AFRICAN MANAGEMENT COMMUNICATION INTERNATIONAL LIMITED V JOSEPH MATHENGE MUGO & ANOTHER (2013) eKLR** Justice Mabeya citing the case of *Hadkinson v Hadkinson ((1952) P285 at 288* held that:

“ it is a 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 the order is discharged”.

14. I have carefully considered the pleadings, application, affidavit, counsel’s submissions and relevant authorities and I have no doubt in my mind that the Respondent is guilty of contempt of the court order dated 15th November, 2013. I therefore direct that the Respondent be arrested by the OCS Sotik Police Station and to be brought to court to show cause why he should not be committed to civil jail.

15. The Applicant shall have the costs of this application.

Dated, signed and delivered at Kericho this 2nd day of February, 2018.

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J.M ONYANGO

JUDGE

In the presence of:

1. The Applicant in person
2. No appearance for the Respondent
3. Court Assistant - Rotich