



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC SUIT NO. 1480 OF 2016**

**NGAMAU KIBURU NGAMAU.....PLAINTIFF/APPLICANT**

**VERSUS**

**PHILIP MBURU NJENGA**

**BERNADETTE NJOKI KAMAU**

**VIRGINIA WAMBUI NGAMAU**

**JOHN NGANGA KIBE.....DEFENDANTS/ RESPONDENTS**

**RULING**

What is before me is the plaintiff's Notice of Motion application dated 4<sup>th</sup> May, 2017 seeking the following orders;

- a) That the honourable court be pleased to find and hold Philip Mburu Njenga, Bernadette Njoki Kamau, Virginia Wambui Ngamau and John Nganga Kibe the defendants/respondents herein in contempt of the court orders that were issued on 2<sup>nd</sup> December, 2016.
- b) That the honourable court be pleased to issue such orders and directions as are necessary for the arrest and committal to jail of the respondents for contempt.
- c) That the court directs the officer commanding station, Kamulu police station to ensure compliance of the court orders and also for the protection of the applicant and his agents.
- d) That the respondents be condemned to pay cost of the application

The application was brought on the grounds set out on the face thereof and on the supporting affidavit of the plaintiff (hereinafter referred to only as "the applicant"). The applicant has averred that on 2<sup>nd</sup> December, 2016 the court issued injunctive orders restraining the respondents from interfering with the applicant's quiet enjoyment of all that parcel of land known as Nairobi/Block 126/461 (hereinafter "the suit property") or any portion thereof pending the hearing of the application inter partes. The applicant has averred that the said orders were extended on 14<sup>th</sup> December, 2016. The applicant has annexed to his affidavit a copy of the said order. The applicant has averred that the said order together with a penal notice was served upon each of the respondents in person.

The applicant has annexed to his affidavit an affidavit of service sworn by a process server of this court. The applicant has averred that on 15<sup>th</sup> April, 2012, he learnt from his son one, David Mukundi who had

visited the suit property that the respondents were putting up developments on the suit property in disobedience of the said court order. The applicant has annexed to his affidavit copies of photographs showing the construction works the defendants are said to have been undertaking on the suit property. The applicant has averred that the respondents pulled down the perimeter fence he had put up around the suit property and hired goons to prevent him and/or his agents from accessing the suit property. The applicant has averred that his efforts to obtain assistance from the police to enable him access the suit property were unsuccessful.

The respondents who were and are still represented by the firm of Mburu Machua & Company Advocates did not file any response to the application and did appear in court on 24<sup>th</sup> July, 2017 when the application came up for hearing. Mr. Kiingati advocate who appeared for the respondents relied entirely on the applicant's affidavit in support of the application. He pointed out that when the applicant filed this suit, there were no developments on the suit property. He submitted that the photographs attached to the present application show structures which have been hurriedly put up. He urged court to allow the application.

I have considered the application together with the affidavit filed in support thereof. I have also considered the submissions by the applicant's advocate. In Black's Law Dictionary (Ninth Edition) contempt of court is defined as:

*“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.”*

In the case of Kenya Tea Growers Association vs. Francis Atwoli and 5 others [2012] eKLR Lenaola J. cited with approval the case of Clarke and others vs. Chadburn & others [1985] 1 ALL E.R (pc), 211 in which the court observed that:

*“I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal....even if the Defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it.”*

The law on contempt of court is now settled. As was held in the case of Katsuri Limited vs. Kapurchand Deepar Shah (2016) eKLR, in order to succeed in civil contempt proceedings, the applicant has to prove:

- (i) The terms of the order alleged to have been disobeyed.
- (ii) Knowledge of these terms by the respondent; and
- (iii) Failure by the Respondent to comply with the terms of the order.

In the case of Mutitika vs. Baharini Farm Ltd. (1985) LKR 227, the court held that the standard of proof of contempt of court must be beyond a balance of probabilities but not beyond reasonable doubt. It is not disputed that the court issued an order on 28<sup>th</sup> November, 2016 restraining the respondents by themselves, their agents, servants or representatives from among others, entering, remaining on, trespassing, encroaching on, alienating or in any other way whatsoever interfering with the plaintiff's quiet enjoyment of the suit property or any portion thereof. It is not disputed that the order was extracted and issued on 2<sup>nd</sup> December, 2016. The terms of the said order and knowledge of the same on the part of the respondents/alleged contemnors is also not disputed.

As I have stated earlier, the application herein was not opposed. Although the respondents filed no response to the application, the burden of proof of the alleged contempt still rested on the Plaintiff. I am satisfied from the material on record that when the applicant filed this suit and the application for injunction, there were no structures on the suit property. This can be seen from the photographs annexed to the applicant's application for injunction. The photographs annexed to the applicant's present

