

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MILIMANI

ELC NO. 353 OF 2017

PHILOMENA WARIGA WAWERU.....PLAINTIFF

=VERSUS=

DUNCAN WANYOIKE & 3 OTHERS.....DEFENDANTS

RULING

1. The plaintiff/applicant filed a chamber summons dated 27th September 2017, in which she seeks committal of the defendants/respondents to civil jail for disobedience of a court order issued on 27th June 2017. The applicant contends that on 27th June 2017, the court issued an order of injunction restraining the respondents ,their agents or employees from interfering ,alienating ,disposing or entering, constructing or in any similar manner remaining on **LR NO.10390/5** pending interpartes hearing of the application.

2. The applicant contends that despite the respondents being served with the order, they did not comply. They went on to construct the houses which are now complete as per the photographs annexed to the supporting affidavit.

3. The respondents who were duly served with the application did not file any replying affidavit .Even when an order was made that they file written submissions in respect of the application for contempt, they did not file any submissions. This however notwithstanding, I will go ahead to determine whether the respondent are guilty of contempt.

4. Contempt of Court is an offence which is *quasi criminal in nature*. It ought to be proved satisfactorily. There are certain basic ingredients of contempt of court which ought to be proved before one can be found guilty of contempt. These are first that there must be evidence that there was a court order given. Secondly, there has to be evidence that the order was served upon the contemnors or that the contemnors had knowledge of the order. Thirdly, there has to be evidence that the order contained a penal clause warning of consequences of disobedience. Fourthly, there has to be evidence that there was disobedience of the order.

5. In the instant case, there is no doubt that there was a court order which was given on 27th June 2017. This order was given ex-parte and therefore service of the same was necessary. There is evidence that the respondents were served with the court order. The extracted court order did not contain a penal clause warning of consequence in case of disobedience. However this notwithstanding I will go ahead to determine whether the order was disobeyed. The applicant had stated in the application which resulted in the orders of 27th June 2017 that the respondents had started constructing structures in May 2017. The structures were of iron sheets according to the photographs annexed to the supporting affidavit.

6. When the applicant filed an application for contempt, she annexed photographs of complete houses. A keen look at the houses shows that they are old houses which could not have possibly been constructed and completed in a span of four months. Contempt of court can land a person in jail. For one to be found guilty there has to be credible evidence that there was such disobedience. I do not find that the applicant has discharged that burden of proof. I therefore find that the applicant has failed to prove that there was contempt of the order given on 27th June 2017. I therefore dismiss the chamber summons dated 27th September 2017 with no order as to costs .

It is so ordered.

Dated, Signed and Delivered at Nairobi this 10th day of April 2018.

E.O .OBAGA

JUDGE

In the absence of parties who were aware of the date and time of delivery of Ruling.

Court Assistant: Hilda

E.O .OBAGA

JUDGE