



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 89 OF 2012

JOHN GITHUI GATUA (suing as personal representative of

MICHAEL KABURIA THEURI (Deceased).....PLAINTIFF

VERSUS

THE COUNTY GOVERNMENT OF TURKANA.....1ST DEFENDANT

MEJA LODUNG.....2ND DEFENDANT

RULING

1. The plaintiff in this matter filed an application dated 4/12/2017 seeking that this court be pleased to find that the ten people he lists in that prayer whom I will refer to as the 1st - 10th respondents are guilty of contempt of court, allegedly committed on 28th, 29th and 30th November, 2016 and 30th and 31st day of December, 2016 and that they be committed to jail for a period of six (6) months or for a term as the court deems fit or be fined or both.

2. The application also seeks orders that the alleged contemnors be ordered to remove all the murrum brought onto the suit premises, Plots Nos. 261, 269 and 293 and restore the beacons and fence marking the plots and restitute them to the possession of the plaintiff or in the alternative to that prayer, they deposit as security a total of Kshs.30,000,000/- being the current total market value of the three plots.

3. The application is supported by the affidavit of the applicant sworn on 4/12/2017. The grounds upon which the application are based are that the alleged contemnors have disobeyed the court orders issued in Eldoret in this suit on 3rd November, 2016; that they interfered with Plot Nos. 269, 261 and 293 and with impunity caused destruction on the suit property, threatened the family of the deceased living thereon, dumped murrum onto the premises and purported to create a road across the suit plots. In effect, it has been stated, they created so much fear that the plaintiff was forced to flee from Lodwar and go into hiding. It has been averred that these actions make it clear that the alleged contemnors have no respect for the court and the rule of law and are determined to take possession of the suit plots by use of brutal force.

4. The 1st respondent filed a notice of preliminary objection dated 11/1/2018 in which he raised two grounds as follows:-

1. That pursuant to Section 34 of the Contempt of Court Act No. 46 of 2016 the application is time barred.

(2) Pursuant to Section 30 of the Contempt of Court Act No. 46 of 2016 this honourable court lacks jurisdiction to punish the cited state officials for contempt of court.

5. The 1st respondent and the 2nd respondent filed their respective replying affidavits both sworn on the 26th March, 2018 while the 8th respondent and the 10th respondents both filed their respective affidavits both sworn on 7/3/2018. Before examining the content of those replies on the merits I must address the preliminary objection filed by the 1st respondent for its merits.

6. The 1st respondent's submission on the preliminary objection is that the acts complained of occurred on 7th 8th, 28th, 29th and 30th November, 2016 and also on 30th and 31st December, 2016; thus, the application is time barred for being filed on 4/12/2017, some 13 months after the alleged acts were committed. **Section 34** of the **Contempt of Court Act** states as follows:-

“No court shall initiate proceedings for contempt of court either on its own motion or otherwise after the expiry of six (6) months from the date on which the contempt of court is alleged to have been committed”.

7. In my view, this provision is clear enough and needs no elaboration or deeper interpretation. The language used in the statute is plain. No other rule of interpretation is needed. The law is that contempt proceedings shall be brought not later than six (6) months after the event

interpreted to be contempt has occurred. The plaintiff/applicant is late by some seven months or so. I find that the plaintiff's application should fail for this reason.

8. The second limb of the objection is on the jurisdiction of this court. Jurisdiction is everything and without it a court cannot take even one step forward in any matter. The moment a court of law finds that it has no jurisdiction, it downs its tools. In my understanding the 1st respondent's submission on this point is that no notice was issued pursuant to **Section 30 of the Contempt of Court Act**.

9. However, I note that the Section refers to a "State Organ", a "Government Department" or "Corporation" being in "in contempt of court" in respect of "any undertaking given to court". Though the suit herein is commenced against a County Government and a natural person, the application dated 4/12/2017 does not ask this court to find the 1st defendant, the County Government to be in contempt. It asks this court to find officers employed by the County Government to be in contempt and for that reason this Section is not applicable here. Secondly it would appear from the very wording of that Section that that "State Organ", etc has to have been found guilty by some determination of court to be in contempt and thirdly, that contempt has to be in respect of any undertaking given to court by the state organ, etc.

10. I do not find there to be a State Organ, Government Department or Corporation etc that is sought to be declared to be in contempt, or that that State Organ, etc has been found to be in contempt or that there was any undertaking to court in this matter that would give rise to contempt. For those reasons I do not find the second limb of the preliminary objection to have any merit.

11. Consequently the first limb of the Preliminary Objection succeeds. The plaintiff's application dated 4/12/2017 is hereby struck out with costs.

Dated, signed and delivered at Kitale on this 29th day of May, 2018.

MWANGI NJOROGE

JUDGE

29/5/2018

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for the parties

COURT

Ruling read in open court in the absence of parties who had been notified.

MWANGI NJOROGE

JUDGE

29/5/2018