



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

**AT KERICHO**

**PETITION NO. 4 OF 2013**

**KIBET ARAP CHERUIYOT & 23 OTHERS.....PETITIONER**

**VERSUS**

**DISTRICT PHYSICAL PLANNING**

**OFFICER, KERICHO.....1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF PHYSICAL PLANNING**

**COUNTY GOVERNMENT OF KERICHO.....2<sup>ND</sup> RESPONDENT**

**KERICHO COUNTY SURVEYOR.....3<sup>RD</sup> RESPONDENT**

**NATIONAL LAND COMMISSION.....4<sup>TH</sup> RESPONDENT**

**CABINET SECRETARY, MINISTRY OF LANDS...5<sup>TH</sup> RESPONDENT**

**RULING**

**Introduction**

1. This Ruling determines the Petitioners' 2 applications dated 25<sup>th</sup> November 2016 brought under Order 51 Rule 1 of the Civil Procedure Rules, Section 5(1) of the Judicature Act Cap 8 of the laws of Kenya, section 3A of the Civil Procedure Act and Order 52 of the Supreme Court Act of England. The first application seeks leave by for the 2<sup>nd</sup> -22<sup>nd</sup> Petitioners to institute contempt proceedings against the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents, while the second application seeks the following prayers:

*a) That the respondents named herein namely; SYLVIA INZIANI, District Physical Planning Officer Kericho, JOHN KIPRONO MIBEY, the Kericho County Surveyor, ISMAIL KOSKEI, Surveyor, Kericho County and JOEL K. BETT, County Secretary and Head of County Public Service, County Government of Kericho be committed to civil jail for contempt of Court for disobeying the order of this court given by lady Justice L.N. Waithaka on 29<sup>th</sup> October 2014*

*b) That the said respondents be ordered to be kept in prison for a term not exceeding six months or such term as this Court may deem fit and just*

c) *That the costs of this application be paid by the respondents*

2. The application first application is based on the grounds stated in the Notice of Motion and the affidavit of Enock Anyona Miruka Advocate, sworn on the 25<sup>th</sup> November 2016. The main ground upon which the application is based is that the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents are in disobedience of this court's order issued on 29<sup>th</sup> October 2016.

3. The second application is based on the affidavit Edward Cheruiyot in which he depones that on 5<sup>th</sup> November 2016, he witnessed the survey exercise being conducted by the above-named respondents in line with the local physical development plan ref. no. R1110/12/01 by placing beacons on the suit property. This was contrary to the Court order issued on the 29<sup>th</sup> October 2016 that the status quo be maintained.

4. The court directed that the applications be canvassed by way of written submissions although only the Petitioners' counsel filed his submissions.

### **Issues for Determination**

5. The main two issues for determination are:

1. Whether leave should be granted to the petitioners to cite the above-named Respondents for contempt of a Court order

2. Whether the said Respondents are in contempt of the Court order issued on 29<sup>th</sup> October 2014.

### **Analysis and Determination**

6. The first issue is straight forward and leave is hereby granted to the Petitioners to cite the respondents for contempt.

7. Regarding the second issue, 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.

8. 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 for imprisonment”***

9. Section 4 of the Contempt of Court Act, 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***

10. From the supporting affidavit, it is clear that parties recorded a consent order that the status quo be maintained. However, there are two challenges; first, the order does not state the duration of the “status quo” nor does it define what the status was at the time, so that there would be no misunderstanding.

11. Secondly, I have looked at the Affidavit of Service sworn by Zablon Osano Onchong'a on 25<sup>th</sup> November 2016 and even though he mentions that he served the Respondents, he does not state who acknowledged service by signing and stamping and who declined to sign. This is compounded by the fact that he has not attached any of the orders served on the respondents.

12. In the absence of proof that each of the above-named respondents was personally served with the

order, I am not in a position to grant the orders sought. Accordingly, I find no merit in the application and I dismiss it with costs to the Respondents.

**Dated, signed and delivered at Kericho this 4<sup>th</sup> day of May, 2018.**

.....

**J.M ONYANGO**

**JUDGE**

**In the presence of:**

1. Mr. Miruka for the Applicants/Petitioners
2. Mr. Bii for Mr. Orina for the 3<sup>rd</sup> & 4<sup>th</sup> Respondents
3. No appearance for he 1<sup>st</sup>, 2<sup>nd</sup> & 5<sup>th</sup> Respondents
4. Court assistant - Wambany