



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC NO.395 OF 2017**

**IN THE MATTER OF : AN APPLICATION BY THE PLAINTIFF/APPLICANT**

**FOR AN ORDER OF COMMITAL TO CIVIL JAIL OF JOHN NJENGA,**

**PETER IRUNGU AND SIMON MWANGI NGURE FOR CONTEMPT OF COURT**

**AND**

**UMOJA CENTRAL COMPANY LIMITED....PLAINTIFF/APPLICANT**

**JOHN NJENGA.....DEFENDANT/RESPONDENT**

**RULING**

1. The plaintiff/applicant filed a notice of motion dated 31<sup>st</sup> July 2017 in which it seeks to have the defendant/respondent together with his two associates who are supervising construction on the disputed property punished for disobedience of a court order given on 27<sup>th</sup> June 2017. The applicant had moved to court under certificate of urgency where it sought to restrain the respondent and his agents from continuing to construct on two disputed properties namely plot 9 and 119 comprised in LR No.209/11346. The application for injunction was placed before me on 14<sup>th</sup> June 2017 when I directed that it be served for inter-partes hearing on 27<sup>th</sup> June 2017.

2. When the application came up for inter-partes hearing on 27<sup>th</sup> June 2017, the respondent who had been served did not appear or file any response to the application. The court proceeded to grant the injunction as prayed. The applicant now contends that notwithstanding the fact that the order given on 27<sup>th</sup> June 2017 and issued on 5<sup>th</sup> July 2017 was duly served upon the respondent in the presence of two of his associates, the three have flagrantly disobeyed the court order and have gone on with the construction on the two suit properties. The applicant therefore calls for the punishment of the trio.

3. The respondent did not file any response to the application. I have gone through the application together with the annexures thereto. This being an application for contempt I have to determine whether the applicant has demonstrated that the respondent and his two associates are in contempt of the court order. For one to be punished for contempt of court order, the applicant must demonstrate that there was a valid court order which required the contemnor to do or not to do a certain act; that the contemnor had knowledge of the said order or was served with the order and that there was wilful disobedience of the court order.

4. In the instant case, there is an order given on 27<sup>th</sup> June 2017 and issued on 5<sup>th</sup> July 2017. The said order was served upon the respondent and his two named associates in the application for contempt. There is an affidavit of service annexed to the application for contempt. When the order of 27<sup>th</sup> July 2017 was served upon the respondent, the two others were present. later when the application for contempt was served, it was also served upon the two associates of the respondent who had now been named as 2<sup>nd</sup> and 3<sup>rd</sup> defendants in an amended plaint.

5. When the applicant came to court, the constructions which were sought to be stopped were at their initial stages. This is clear from the photographs annexed. In the application for contempt, the applicant has annexed photographs which show that the buildings are still going on. I find that the applicant has proved that indeed there was contempt of a court order. I find that the three contemnors namely John Njenga, Peter Irungu and Simon Mwangi are in contempt of court. The three should be arrested with the assistance of the OCS of the police station which has jurisdiction over the area where the suit properties are situated. Once arrested, the three should be brought to court on any working day to be dealt with in accordance with the law.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 19<sup>th</sup> day of July 2018.**

**E.O.OBAGA**

**JUDGE**

Presence of :-

M/s Kimani for Mr Anzala for applicant

Court Clerk: Hilda

**E.O.OBAGA**

**JUDGE**