



**REPUBLIC OF KENYA**

**IN THE LAND AND ENVIRONMENT COURT AT KERICHO**

**ELC CASE NO. 30 OF 2016**

**JANEFER CHEBII KIMETTO (Suing as the personal representative of the  
estate of the estate of Jonah Kipkoske arap Chumo...PLAINTIFF/ RESPONDENT**

**VERSUS**

**BOARD OF GOVERNORS**

**CHEBWAGAN YOUTH POLYTECHNIC.....DEFENDANT/RESPONDENT**

**RULING**

**Introduction**

1. What is before me is the Plaintiff/Applicant's application dated 22<sup>nd</sup> June 2018. The said application which is brought pursuant to Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the civil Procedure Act and Section 4(1) (a) of the Contempt of Court Act No. 46 of 2016 seeks the following orders:

- a) Spent
- b) *THAT* the respondent being the Board of Governors members be held to be in contempt of court's orders issued on 02/08/2016.
- c) *THAT* the OCS Litein Police station do provide security during compliance with the order.
- d) *THAT* cost of the application be provided for.

2. The application is based on the grounds that the Defendants/Respondents have not complied with the court order dated 2<sup>nd</sup> August 2016 as they have continued with construction of structures and are doing all acts which are prejudicial to the plaintiffs.

3. The application is supported by the Plaintiff's affidavit sworn on the 22<sup>nd</sup> June 2018 in which she depones that despite the order dated 2<sup>nd</sup> August 2016 restraining the defendants from continuing with further construction of structures on land parcel number KERICHO/LITEIN/330, the defendants have gone ahead with the construction.

4. She further avers that the Governor, Kericho County has recruited 600 soldiers of the National Youth Service who study and reside on the suit land thereby necessitating the construction of more classes and rooms to accommodate them.

5. She avers that the defendants were duly served with the court order but they have defied the same.

6. The application is opposed by the Defendants through the Replying affidavit of Samuel Sigei, the Chairperson of the Defendant institution sworn on the 3<sup>rd</sup> July 2018 in which he denies that they are in contempt of the court order.

7. He avers that he was not served with the said court order as it was served on the former members of the Board of Governors who were held to be in contempt and subsequently jailed. He further avers that the said contempt proceedings were later set aside on 16<sup>th</sup> March 2018. He avers that in any event the developments on the suit property are under the management of County Government of Kericho and not the defendant.

8. The court directed that the application be canvassed by way of written submissions but only the Respondent's counsel file his submissions.

9. I have considered the application, rival affidavits and the submissions of the Respondent's counsel.

10. I agree with the Respondent's counsel that this application is misconceived and I would add that it is an abuse of the process of the court. The applicant filed a similar application on 22<sup>nd</sup> February 2017 seeking that the members of the defendant's Board of Governors be committed to civil jail for disobeying the court's order dated 2<sup>nd</sup> August 2016. The said application was heard and determined vide the court's Ruling dated 12<sup>th</sup> July 2017 resulting in committal to civil jail of the Defendant's Board members.

11. It later emerged that the persons who were jailed were no longer members of the defendant's Board of Governors and the orders were set aside on 16<sup>th</sup> March 2018 and the Defendant was granted leave to file its Defence out of time. Directions were subsequently given and a hearing date taken.

12. The plaintiff has now come back to court seeking similar orders against the current Chairman of the defendant's BOG. There is no evidence that the said chairman was personally served with the order dated 2<sup>nd</sup> August 2016.

13. In the case of **Teachers Service Commission V Kenya National Union of Teachers & 2 Others (2013) eKLR** the court observed as follows:

*The importance of personal service in contempt proceedings which are quasi-criminal in nature need not be overemphasized.*

*The Halsbury's laws of England 4<sup>th</sup> Edition Vol 9 at page 37 provides as follows:*

*"As a general rule no order of court requiring a person to do or abstain from doing any act may be enforced unless a copy of the order has been served personally on the person required to do or abstain from doing the act in question.*

*Similarly, the explanatory notes in Order 52 Rule 3 (1) of the England Supreme Court Rules which are applicable in our jurisdiction provide that:*

*"No order will normally be issued for the committal of a person unless he has been personally served with the order, disobedience to which is said to constitute the contempt, or if the order is directed at a group of persons or corporation, some appropriate member has been personally served.*

*In my view the words "general rule" and "normally" in these provisions are instructive. To my mind, the import here is that in the normal scheme of things personal service in matters of contempt is a requirement"*

*In **Basil Criticos V A.G (2012) eKLR** Lenaola J (as he then was) held as follows:*

*The law has changed and as it stands today, knowledge supersedes personal service... where a party clearly acts and shows that he had knowledge of a court order, the strict requirement that personal service must be proved is rendered unnecessary"*

14. In the instant case, the applicant has not placed any evidence before this court to show that the current chairman of the Board of Governors was served or that he was aware of the court order. It is not clear to the court when the said chairman came into office and therefore I cannot assume that he was aware of the court order.

15. From the foregoing, it is my finding that the application has no merit and it is hereby dismissed with costs to respondents.

**Dated, signed and delivered at Kericho this 25<sup>th</sup> day of October, 2018.**

**J. M. ONYANGO**

**JUDGE**

**In the presence of:**

1. Mr. Motanya for Plaintiff
2. Mr. Kemboi for Mr. Okiro for the Defendant
3. Court assistant - Rotich