



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC CASE NO. 59 OF 2017**

- 1. MOHAMED HASSAN ALI
- 2. REHEMA HASSAN
- 3. ALI KHAMISI JUMA
- 4. JUMAA ABDALL JUMA
- 5. SULEIMAN NGWARE.....PLAINTIFFS

**VERSUS**

- 1. RUKIA HASSAN
- 2. MOHAMED KHERI
- 3. SEIF AMIR
- 4. SWALEH HASSAN.....DEFENDANTS

**RULING**

1. By a notice of Motion dated 27<sup>th</sup> August, 2018, the Plaintiffs/Applicants are seeking the following orders:

- 1. That this application be certified as urgent and service thereof be dispensed with in the first instance.
- 2. That this Honourable court having cited the defendants, jointly and severally, for contempt of court for disregarding a court order issued on the 12<sup>th</sup> day of February, 2018 proceeds to condemn the Defendants to 6 months imprisonment and/or to such other appropriate penalty it may deem fit and just.
- 3. That the court Bailiff and/or an auctioneer appointed by the plaintiffs to proceed under necessary police protection by the OCS of Bamburi Police Station to have the structures erected on the suit property in disobedience of the court orders immediately removed.
- 4. That costs of this application be provided for.

2. The Application is based on the grounds on the face of the Motion and supported by the Affidavit of Mohamed Hassan Ali sworn on 27<sup>th</sup> August, 2018. Briefly, the Applicants aver that the court on 8<sup>th</sup> February 2018 made orders of temporary injunction restraining the defendants either by themselves, their employees, servants and/or agents from trespassing into or entering into, committing acts of wastage, alienating and/or interfering with the Plaintiff's quiet and peaceful occupation of a portion on **PLOT SUB-DIVISION NO.6827 (ORIGINAL NO.172/2) SECTION II MAINLAND NORTH** pending the hearing and final determination of this suit. That despite being duly served with the said court orders with notices of penal consequences, the defendants have jointly and severally failed and/or refused to comply and persisted in such refusal to obey any of the court orders issued by the court. That in spite of having been duly cited for contempt of court orders and being directed to remove the structures erected in disobedience of the court orders the defendants have jointly and severally persisted in further disobedience of the court orders and continued to bring the integrity of the court process under further and escalated disrepute. It is the applicant's contention that the blatant persisted refusal to obey valid court orders on the part of the defendants is not only an act of persistent contempt but calculated to undermine the sanctity of the court process and the general authority of the court

itself.

3. The defendants were served with the Application but did not file any response. Therefore the Application is not opposed.

4. I have considered the Application and the Affidavit in support.

There is no dispute on 8<sup>th</sup> February, 2018 this court made of orders of temporary injunctions against the defendants. The Defendants were restrained from the acts listed in the order pending the hearing and determination of this suit.

5. On 4<sup>th</sup> May, 2018 the Plaintiffs filed the notice of motion dated 4<sup>th</sup> May, 2018 seeking to cite the Defendants for contempt for disregarding the court order made on 8<sup>th</sup> February, 2018 and issued on 12<sup>th</sup> February, 2018. The defendants did not oppose the said Application despite having been duly served.

6. On 19<sup>th</sup> July, 2018 this court ordered the defendants to remove the structures erected in disobedience of the Court order. Having failed to remove the said structures as ordered by the court, the defendants are no doubt in contempt of the order of the court.

7. From the evidence on record, I am satisfied that the defendants have disobeyed the orders of the court issued on 12<sup>th</sup> February 2018. All parties must comply with orders of the court whatever they think about such order. To my mind, parties who are dissatisfied with the order of 12<sup>th</sup> February, 2018 should have attempted to get rid of the same through the proper course that is either setting aside or through appeal. So long as the order exists, the parties are bound to obey the same to the letter.

8. The Defendants have not explained to the court why they are not willing to obey the court order. The Applicants have every right to take such steps or measures to enforce the order so as to secure their property and are therefore entitled to the order in terms of Prayer 3 of the Application.

9. Consequently, and for the foregoing reasons, the Application is partly successful as follows:

**1. That the court Bailiff and/or an Auctioneer appointed by the Plaintiffs to proceed under necessary police protection of OCS, Bamburi Police Station to have the structures erected on the suit property in disobedience of the court order issued on 12<sup>th</sup> February 2018 immediately removed.**

**2. Costs of this Application and of executing the order herein to be borne by the Defendants.**

10. It is so ordered.

**DATED, DELIVERED and SIGNED at MOMBASA this 18<sup>TH</sup> day of October, 2018**

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**C. YANO**

**JUDGE**