



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

CASE No. 106 OF 2018

RICHARD KIPCHUMBA.....PLAINTIFF

VERSUS

LENDUSE OLDAISABA.....DEFENDANT

RULING

1. By Notice of Motion dated 21st March 2018, the plaintiff sought the following orders:

1. Spent.

2. That this honourable court be pleased to punish the respondent herein by detaining him in jail for a term not exceeding six months for contempt of court for disobeying orders issued on the 7th March 2018.

3. That this honourable court be pleased to make such further orders as is just in the circumstances.

4. That costs of this application be borne by the respondent herein.

2. The application is supported by an affidavit sworn by the applicant. He deposed that the defendant despite being served with the court's Order made on 6th March 2018, disregarded the order by finishing cultivation on the suit property, planting maize and even constructing a semi-permanent structure on it.

3. The defendant responded to the application through a very brief replying affidavit in which he dismissed the applicant's allegations as "non-substantive" and a waste of the court's time.

4. At the hearing of the application, the applicant relied entirely on the supporting affidavit and urged the court to grant the orders sought. On his part, the respondent filed brief written submissions through his advocates in which he restated that the application is based on "non-substantive" allegations and that it is a waste of time.

5. I have considered the application, the affidavits filed and the submissions. Contempt of court is a serious matter since it goes to the very root of the dignity of the court and law and order. It cannot be accepted in a civilized society. Any person who is served with a court order must obey it and if in doubt must return to court for any clarification.

6. The Court of Appeal recently rendered itself in **Fred Matiang'i the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government v Miguna Miguna & 4 others [2018] eKLR** as follows:

When courts issue orders, they do so not as suggestions or pleas to the persons at whom they are directed. Court orders issue ex cathedra, are compulsive, peremptory and expressly binding. It is not for any party; be he high or low, weak or mighty and quite regardless of his status or standing in society, to decide whether or not to obey; to choose which to obey and which to ignore or to negotiate the manner of his compliance. This Court, as must all courts, will deal firmly and decisively with any party who deigns to disobey court orders and will do so not only to preserve its own authority and dignity but the more to ensure and demonstrate that the constitutional edicts of equality under the law, and the upholding of the rule of law are not mere platitudes but present realities.

7. On 6th March 2018, this court made the following orders:

That temporary injunction is issued restraining the defendant herein either by himself, his servants, employees and/or agents from entering, encroaching, trespassing and/or in any manner dealing with the plaintiff's parcel of land number Nakuru/Nessuit Settlement Scheme/1976 pending the hearing and determination of this application.

8. I have perused the supporting affidavit as well as the annexed affidavit of service sworn by Hebron Odhiambo Omollo. I am satisfied that the order was served on the respondent on 8th March 2018. He acknowledged service. He has not denied that he was served. Instead, he has generally dismissed the allegations against him. A party who is faced with the serious allegation of being in contempt of court is expected to do much more than just offering a general and summary response. The order had a penal notice and the respondent was therefore fully aware of what he was confronting. I am therefore satisfied that the respondent has disobeyed the order by continuing to cultivate on the suit property and constructing a semi-permanent structure on it.

9. **Section 28(1) of the Contempt of Court Act No. 46 of 2016** provides:

28. Punishment for contempt of court

(1) Save as otherwise expressly provided in this Act or in any other written law, a person who is convicted of contempt of court is liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both.

10. I therefore find and hold that the defendant/respondent is guilty of contempt of court as regards the order issued on 6th March 2018. I order that he pays a fine of Kshs.30, 000 (thirty thousand). In default, he shall be imprisoned for a period of one (1) month.

11. Costs of the application are awarded to the plaintiff.

Dated, signed and delivered in open court at Nakuru this 7th day of December 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Plaintiff present in person

Defendant present in person

Counsel for defendant absent

Court Assistants: Gichaba & Lotkomoi