



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

E.L.C CASE NO. 691 OF 2014

(Formerly Nyeri HCC No. 79 of 2009)

1. AMON KINYUA
2. CHARLES NDIGIRIRI WANG'OMBE
3. DAVID RUNYORA MACHARIA
4. JULIUS CHIIRA NJIRU
5. VERONICA WAMBUI KIMUNYA
6. ELIMA alias ALIMA WATETU MIATU
7. DANIEL THIRIKWA KININI
8. TERESIA MUTHONI MAINA
9. ELIZABETH NYAWIRA MUTHANGA
10. JOHNSON GATHURI MWANU
11. WILSON NDIRITU NGIRI
12. ALICE WANGARI NDIGIRIRI
13. ESTHER WANJA THIRIKWA
14. JOSHUA WANJA THIRIKWA
15. JULIUS MWANGI MUGO
16. ALBERT NGURE NYINGI
17. JULIUS CHAKI MBOGO
18. CHARLES NJURE MURAGE
19. SHELMITH WAMBUI WAWERU.....PLAINTIFFS/RESPONDENTS

-VERSUS-

NDATHI MUGUNDA COMPANY LIMITED..DEFENDANT (APPLICANT)

RULING

1. On 9th November, 2016 this court found the 18th plaintiff herein (hereinafter referred to as the contemnor) to have been in contempt of the orders issued on 19th March, 2008 and ordered him to show cause why he should not be punished.
2. Consequently, the contemnor filed the affidavit he swore on **23rd January, 2016** in which he, *inter alia*, contends that:
 - (i) The order he is said to have violated was not served personally on him as by law required;
 - (ii) That the defendant/applicant did not prove that he was personally served with the order with the penal notice as by law required;
 - (iii) That no leave of the court was obtained to institute the contempt proceedings;
 - (iv) That he did not dispose of the suit property; and
 - (v) That the orders in respect of which the application for contempt was premised referred to the 9th plaintiff as opposed to him
3. The contemnor further contended that the order on which the application for contempt is premised was not qualified; that he could not have disobeyed the order because he was not aware of it and that he should not be punished on account of a mistake of his advocate (the contemnor's advocate is said to have failed to plead that the agreement pursuant to which the contemnor has been found to be in contempt should not be visited on the contemnor).
4. Arguing that there is an error apparent on the face of the court's record, the contemnor urges the court to grant him seven (7) days to apply for review of the order.
5. In reply, counsel for the defendant/applicant submitted that the contemnor should have applied for review or appealed against the court's decision that he disobeyed its order. Arguing that no new evidence is admissible in a notice to show cause, he submitted that the contemnor has not shown why he should not be punished.

Analysis and determination

6. As pointed out herein above, this court found the contemnor to have disobeyed the order pursuant to which the defendant/applicant sought to have him punished. Instead of showing cause as to why he should not be punished for that offence, the contemnor proceeded as if he had filed an application for review of the determination, which is not the case.
7. In my view, if the contemnor wanted to show the court that he has a good case for review, he should have moved the court for stay of the notice to show cause pending the hearing of the intended application for review.
8. As things stand now, I am unable to find any justifiable explanation as to why the contemnor should not be punished for disobedience of the orders of the court. Consequently, I fine him Kshs.20, 000/-. In default Charles Njure Murage to serve 15 days in jail.

Orders accordingly.

Dated, signed and delivered at Nyeri this 8th day of March, 2017

L N WAITHAKA

JUDGE

In the presence of:

Mr. Kimunya h/b for Mr. Mahinda for the plaintiff

Mr. Cheruiyot h/b for Mr. Mugambi for the defendant

Court clerk - Esther