



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 125 OF 2014

DAVID SIKUKU KONES.....PLAINTIFF

VERSUS

BASHIR TOWET CHEMASWET.....1ST DEFENDANT

VINCENT WASAMA KIRUNYI.....2ND DEFENDANT

R U L I N G

1. The principal prayer sought by the plaintiff/applicant is the application dated **6/12/2016** is that the 2nd defendant, **Vincent Wasama Kirunyi** be committed to civil jail for a period of up to 6 months for disobeying the court orders issued in this suit on **14/7/2016**.

2. The order that is alleged to have been breached is attached to the supporting affidavit. It reads as follows:-

“It is hereby ordered as follows:-

(1) That the application dated 3rd March, 2015 seeking to set aside the orders issued on 21st day of January, 2015 is hereby dismissed”.

3. I have considered this application and the seriousness of the order sought. One question that arises is whether there is any order emanating from the proceedings of 14/7/2015 that is capable of being disobeyed by any party. The order given on the 14th July, 2015 merely dismissed the application dated 3rd March, 2015.

4. If the effect of the said order is that another order issued earlier on in these proceedings came into force again after a period of stay, then in this court’s consideration, that earlier order is the order that matters in these proceedings.

5. It is noteworthy that the applicant himself is at pains to explain how the orders of 14/7/2015 could have been disobeyed by the respondent, and it appears that he cannot do so easily without alluding to its connection to an earlier order. This is seen from paragraph 5 of the affidavit supporting the application. It states as follows:-

“5 That I am informed by my advocate on record, information I believe to be true that the orders of 21/1/2015 which had been stayed by the 2nd respondent’s application became as from 13th July, 2015 operation”.(sic).

6. At paragraph 7 of the same affidavit the deponent states:-

“7 That I am informed by my advocates on record information I verily believe to be true that the orders of 14/7/2015 were duly served on both defendants on 9/11/2016. Annexed and marked “DSK-1” is a true copy of the affidavit by Archibald Nyukuri Wekesa dated this 11th day of November, 2016”. (sic)

7. The order served did not require the defendants to do or to abstain from doing anything it merely dismissed an application filed by the 2nd defendant. There is no disobedience that may arise out of that order. For that reason the application dated **6th December, 2016** is without merit and it is hereby dismissed with costs.

Signed, dated and delivered at Kitale on this **30th** day of **May, 2017**.

MWANGI NJOROGE

JUDGE

30/5/2017

Before – Mwangi Njoroge Judge

Court Assistant – Isabellah

N/A for the parties

Ruling read in open court.

MWANGI NJOROGE

JUDGE

30/05/2017