



REPUBLIC OF KENYA

IN THE LAND AND ENVIRONMENT COURT AT KERICHO

ELC CASE NO. 30 OF 2016

JANEFER CHEBII KIMETTO.....PLAINTIFF/ RESPONDENT

(Suing as the personal representative of the estate of the estate of

Jonah Kipkoske arap Chumo)

VERSUS

BOARD OF GOVERNORS

CHEBWAGAN YOUTH POLYTECHNIC.....DEFENDANT/RESPONDENT

RULING

The Plaintiff commenced this suit by way of Plaint dated 26th May 2016. Her contention is that the defendant illegally trespassed onto her land parcel number KERICHO/LITEIN/330 and started constructing permanent structures thereon. She therefore sought injunctive orders to restrain the defendant from continuing with the said construction.

Simultaneously with the plaint, the plaintiff filed an application for injunction under certificate of urgency seeking a temporary injunction to restrain the defendant from erecting permanent structures and continuing with acts of trespass on the suit land which are prejudicial to the plaintiff's proprietary interests in land parcel no. KERICHO/LITEIN/330 pending the hearing and determination of the main suit.

The application was heard and an order was issued on the 2nd August, 2016 stopping the defendant's construction on the suit land.

According to the Affidavit of Service on record, the said order was served on one Geoffrey Kemei, the Secretary to the defendant in charge of Chebwagan Youth Polytechnic on 11th August, 2016.

Despite having been served with the said order, the defendant continued with the construction prompting the plaintiff to file the instant application dated 22nd February, 2017 that the members of the Board of Governors of the defendant Polytechnic namely, Pastor Kenneth Rotich, Geoffrey Koros, Abdreu Bii, Zipporah Soi, and Geoffrey Kemei be committed to civil jail for disobeying the express orders of this honourable court.

The said application which is supported by the plaintiff's affidavit was served upon each of the persons named in the application on 14th March, 2017. The same was fixed for hearing on 4th April, 2017 but the defendants neither filed a response nor attended court on the hearing date.

The plaintiff's advocate filed written submissions in which he cited several authorities in support of the plaintiff's application.

There are only two issues for determination;

1. Whether the defendant/respondents are in contempt of the court order made on 2nd August, 2016.
2. Whether the plaintiff/applicant is entitled to the orders sought.

In order to punish a party for contempt of court it is important to establish whether a party has actually committed the act complained of.

Black's Law Dictionary (Ninth Edition) defines contempt of court as follows;

“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment”

On the first issue, from the material placed before me, it is clear that the plaintiff obtained an order for injunction to restrain the defendants from continuing with construction of permanent structures on the plaintiff's land. The said order was duly served on one Geoffrey Kemei who is the Secretary of the BOG and whose duty it was to communicate to the other Board of Governors members that such an order had been issued against them. In spite of this, they went ahead and completed construction of the permanent structures contrary to the court order.

No explanation has been offered as to why the court order was disobeyed as the defendants have not filed any replying affidavit. The plaintiff's averments are therefore uncontroverted. I am therefore satisfied that the defendants disobeyed the court order and are therefore in contempt thereof.

On the second issue, Order 40 Rule 3(1) of the Civil Procedure Rules provides as follows:

“In case of disobedience, or breach of any terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in prison for a period not exceeding six months unless in the meantime, the court directs his release”

Section 63 of the Civil Procedure Act further provides that:

“In order to prevent the ends of justice from being defeated, the court may, if it so desires

(c) Grant a temporary injunction and in case of disobedience, commit the person guilty thereof to prison and order that his property be attached and sold”

The rationale for contempt orders is set out in the case of **TEACHERS SERVICE COMMISSION V KENYA NATIONAL UNION OF TEACHERS & 2 others (2013) eKLR** where Ndolo J observed as follows:

“38 The reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law”

Furthermore, in the case of **AFRICAN MANAGEMENT COMMUNICATION INTERNATIONAL LIMITED V JOSEPH MATHENGE MUGO & ANOTHER (2013) eKLR** Justice Mabeya citing the case of **Hadkinson v Hadkinson ((1952) P285 at 288** held that:

“ it is a plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until the order is discharged”

I have carefully considered the pleadings, application, affidavit submissions and authorities cited to me and I have no doubt in my mind that the defendants are guilty of contempt of the court order dated 2nd August, 2016. I therefore commit Pastor Kenneth Rotich, Geoffrey, Koros, Andrew Bii, Zipporah Soi, and Geoffrey Kemei to jail for a period of three months with immediate effect.

The Plaintiff shall have the costs of this application.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 12TH DAY OF JULY 2017.

.....

J.M ONYANGO

JUDGE

In the presence of:

1. Miss Chelimo for the Applicant.
2. N/A for the Respondent.

Miss Chelimo: Hearing on 23/11/2017.