



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L PETITION NO. 14”B” OF 2015

WILSON K. KWAMBAI.....1ST PETITIONER/APPLICANT

ANN KOSGEL.....2ND PETITIONER/APPLICANT

VERSUS

DIRECTOR OF SURVEYS.....1ST RESPONDENT

COUNTY GOVERNMENT OF UASIN GISHU...2ND RESPONDENT

ATTORNEY GENERAL.....3RD RESPONDENT

AND

JOSEPH KERONEY.....1ST CONTEMNOR/RESPONDENT

IRENE MAGUT.....2ND CONTEMNOR/RESPONDENT

RULING

The Petitioners have come to court by way of Notice of Motion dated 21.10.2015 against Joseph Keroney and Irene Magut the alleged Contemnors praying that the honourable court do commit the alleged Contemnors to 2 years imprisonment and they be condemned to pay fine of Kshs. 20,000,000.00 or both for being in contempt of court orders dated 23.9.2015. The application is based on grounds that on 23.09.2015, the Honourable Court upon hearing the Petitioners’/Applicants’ application dated 22.09.2015 granted Interim Orders of status quo existing then on land parcel L. R. No. 4491 measuring 177.53 Ha to subsist against the 1st and 2nd respondents’ Notices dated 2nd September, 2015 and 16th September, 2015 pending the hearing of the Notice of Motion dated 21.09.2015 inter-parties.

That on 09.10.2015, the Petitioners were duly served with the said court order through the Legal Office of the 2nd respondent. That on 09.10.2015, the Contemnors/respondents in spite of having been duly served proceeded to break ground, graded and created a 12 meters road stretching about 2.8 kilometers within the Petitioners’/Applicants’ agricultural parcel of land L. R. No. 4491 measuring 177.53 Ha. The Contemnors/respondents have thus breached court orders dated 23.09.2015. According to the Petitioners/Applicants, they have been extensively prejudiced by the unlawful actions of the Contemnors/respondents.

They believe that the Honorable court orders cannot be issued in vain and that this Honorable court has powers under the Environment and Land Court Act 19 of 2011 to penalize the Contemnors/respondents

for contempt of court. This application has been brought out expediently and without undue delay.

The application is supported by the affidavit of Annah Jemutai Koskei who states that on the 23.9.2015, the court made an order of status quo being maintained when order was issued on 25.9.2015. The order was served upon the Legal Officer of the 2nd respondent on 6.10.2015 on the 9.10.2015. The alleged Contemnors were served but they declined to sign copies. Despite being served, the alleged Contemnors instructed the 2nd respondent's workers to break ground and create a 12-meter road on the Petitioner's suit land of L. R. No. 4491. The demolition was unlawful and malicious and ended up damaging the perimeter fence protecting the entire parcel of land.

M/s Irene Magut states that she was not served with the court order. Mr. Peter Leley, the County Secretary, Uasin Gishu County states that service was not effected of the court order.

I have considered the evidence on record and do find that an order was made on 23.9.2015 to the effect that the status quo be maintained on the ground. There is no evidence that Joseph Keroney or Irene Magut were personally served or were aware of the court order. There is a possibility that their superiors one of them being the legal officer were aware of the court order but did not bring it to the attention of the alleged Contemnors. Contempt of court being a quasi-criminal charge, there must be evidence of knowledge of the court order. I do find that the petitioners have not discharged their burden of proof as required in such matter that Joseph Keroney and Irene Magut were aware of the court order.

I am guided by the holding of Lenaola J in the case of **Basil Criticos Vs Attorney General and 8 Others [2012] eKLR** where he stated that: -

“...the law has changed and as it stands today knowledge supersedes personal service.... where a party clearly acts and shows that he had knowledge of a Court Order, the strict requirement that personal service must be proved is rendered unnecessary”

The standard of proof in matters of contempt of court is well settled. It must be higher than proof on a balance of probabilities, almost but not exactly beyond reasonable doubt. See the case of **Mutitika Vs Baharini Farm Limited [1985] KLR 229**. This is because the charge of contempt of court is akin to a criminal offence. A party may lose his liberty. I will reiterate the sentiments of Romer LJ in **Hadkinson -v- Hadkinson (1952) P 285 at 288** that: -

“It is 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 that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void” (Emphasis added)

Further, Lord Donaldson MR said in **Johnson -v- Walton (1990) 1 FLR350 at 352** stated: -

“It cannot be too clearly stated that, when an injunctive order is made or when an undertaking is given, it operates until it is revoked on appeal or by the court itself, and it has to be obeyed whether or not it should have been granted in the first place.” (Emphasis mine)

To my mind therefore, a party must comply with an order whatever he thinks of such an order. What is important is that such a party has knowledge of the terms of the order. The upshot of the foregoing is that the applicant has not proved as required by law that the alleged contemnors are in contempt and therefore the application is dismissed with costs.

DATED AND DELIVERED AT ELDORET THIS 17TH DAY OF AUGUST, 2017.

A.OMBWAYO

JUDGE