



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT THIKA**  
**THIKA LAW COURTS**  
**ELC.NO.8 OF 2017**  
**JOSEPH MBURU NDEKEI.....APPELLANT/APPLICANT**  
**-VERSUS-**  
**RUTH NJERI MUTEMA.....RESPONDENT**  
**RULING**

The matter for determination herein is the *Notice of Motion* application dated *30<sup>th</sup> November 2016*, brought by the Appellant/

Applicant seeking for the following orders:-

- 1. Spent.**
- 2. That the Respondent and her agent, Josiah Kamau Gachea be committed to civil jail for six (6) months for contempt of this Honourable Court for failure to obey the orders of this Honourable Court given in 10<sup>th</sup> November 2016.**
- 3. That the costs of this application be provided for.**

The application is premised on the grounds stated on the face of the application and on the annexed affidavits of *Kanyi Gakiya* and *Joseph Mburu Ndekei*. These grounds are:-

- 1. That on the 9<sup>th</sup> May 2016, this Honourable Court issued an order that the parties do maintain the status quo in relation to title, use and possession of the suit property known as Chania/Ngorongo/1443.**
- 2. That on 10<sup>th</sup> November 2016, this Honourable Court issued orders in the presence of both parties staying the lower court judgement, decree and/or orders of 19<sup>th</sup> April 2016, and also the status quo of the suit property to be maintained.**
- 3. That despite service and knowledge of the Court Order the Respondent and her agent (Josiah Kamau Gachea) have failed and/or refused to obey the said orders.**
- 4. That the Respondent and her agents are threatening to cause harm on the Appellant/Applicant.**

**5. That the willful disobedience of the Court Order by the Respondent and her agent is an affront on the dignity of this Court and it is therefore in the interest of justice that the Respondent and her agent be committed to civil jail.**

In his **Supporting Affidavit, Kanyi Gakiya** averred that he is an advocate of the High Court and that after the Judgement on **Thika CMCC No.76 of 2014**, the Appellant instructed his firm to file an appeal against the said Judgement. He further averred that on **22<sup>nd</sup> April 2016**, they filed a Memorandum of Appeal and an application for stay of execution of the Judgement of the lower court. Further, that on **9<sup>th</sup> May 2016**, the Court issued interim orders to the effect that *status quo* was to be maintained. Further that Judgement of the lower court was stayed on **10<sup>th</sup> November 2016**, with a further **Order of status quo** to be maintained. The said Orders were served on the Respondent's Advocates and the Respondent personally on **16<sup>th</sup> November 2016**.

He further alleged that he has now been informed by the Appellant that the Respondents and her agents have invaded the Appellant's land after the lower court delivered its Judgement. He further averred that the Respondent and her agent have displayed the utmost contempt for this Court and thus prayed for the orders sought. He urged the court to allow the orders sought and commit the Respondent to civil jail.

**Joseph Mburu Ndekei**, the Appellant swore his **Supporting Affidavit on 30<sup>th</sup> November 2016**, and averred that he purchased the suit property on **14<sup>th</sup> November 2014**, and took possession of **Chania/Ngorongo/1443**. Further that he took possession as the registered proprietor and has remained in possession. That he was dissatisfied with the lower court Judgement delivered on **19<sup>th</sup> April 2016** and he filed a memorandum of Appeal. He further obtained interim orders on **9<sup>th</sup> May 2016**, for maintenance of *status quo* and on **10<sup>th</sup> November 2016**, the Court stayed the Judgement of the lower court and further ordered *status quo* to be maintained. He alleged that the said orders were served upon the Respondent's advocates and the Respondent personally but the Respondent has refused to obey, respect and/or comply with the Court Orders made on **10<sup>th</sup> November 2016**. That the Respondent should be barred from invading, trespassing onto and/or further destruction of the suit property **Chania/Ngorongo/1443**. He also urged the Court to commit the Respondent to civil jail for disobeying the Court Orders.

The application is **opposed** and **Ruth Njeri Mutema** swore a **Replying Affidavit on 1<sup>st</sup> April 2017** and averred that on **10<sup>th</sup> November 2016**, the Court issued an Order of *status quo* prevailing be maintained pending the hearing and determination of the Appeal. She alleged that the Order of *status quo* was with regard to the use, occupation and possession of the land and hence the order meant whatever arrangement that was in existence to prevail. It was her allegation that the property was held by **Dorcas Wambui Mutema**, and the prevailing *status quo* was that **Dorcas Wambui Mutema** was in possession and was always in possession of the suit land and the Appellant has never taken possession of the same. That the Appellant had even testified that he was never in possession of the suit property. Therefore, it was her contention that she was never in contempt of the Court Order and that she never colluded with **Josiah Kamau Gachea** to flout the Court Order. She urged the court to dismiss the Appellant's application.

In his further affidavit, the Applicant reiterated that he has always been in possession of the suit property since the full payment of the purchase price. That he is the legally registered proprietor of the suit property with a valid title deed.

This application was canvassed by way of written submissions which this Court has carefully considered. The Court has also considered the cited authorities and the relevant provisions of law. The application is premised under Order 40 Rule 3 of the Civil Procedure Rules which provides that:-

**“In cases of disobedience or breach of any such term, 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 term not exceeding six months unless in the meantime the court directs his release”.**

The application is also anchored upon Section 63(c) of the Civil Procedure act which provides that:-

***“In order to prevent the end of justice from being defeated, the court may, if so prescribed:-***

***i. 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”.***

Taking into account the above provisions of law, the issue for determination is whether the Applicant is deserving of the orders sought or whether there was breach of Court Order by the Respondent.

The Court has considered the court record and it is evident that on **9<sup>th</sup> May 2016**, the court did issue an order to the effect that ***“with a view to preserve the suit property pending the hearing of the application, the parties shall maintain the status quo in relation to the title, use and possession of the said property pending the hearing of the application and further orders”.***

The Court has noted that though an Order of *status quo* was ordered, the said *status quo* prevailing then was not defined.

On **10<sup>th</sup> November 2016**, the Court has noted that the Appellant applied for stay of execution and **Mr. Kanyi** for the Respondent stated that he had no objection to the application provided that security was provided and his client was to remain in possession. As per **Mr. Kanyi's** submissions the Respondent was in possession of the suit property.

Subsequent thereto, the Court granted Orders of *status quo* prevailing as of that date and stated that the said *status quo* was to be maintained pending the hearing and determination of the Appeal.

Further the court did not state which *status quo* was prevailing but since Mr. Kanyi had alleged that the Respondent was in possession of the suit property, the said allegation was not objected to by the Appellant, the Court will assume that was the prevailing *status quo*.

**Contempt of Court** is defined by the **Black Law Dictionary 9<sup>th</sup> Edition** as:-

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

In the case of **Robertson...Vs...Her Majesty's Advocate,2007, HCAC 63,**

**Lord Justice Clerk** stated:-

***“Contempt of Court is constituted by conduct that denotes willful defiance of or disrespect towards the court or that willfully challenges or affronts the dignity of the court or supremacy of the law whether in civil or criminal proceedings”.***

From the above findings of Court, it is clear that contempt of court is a serious offence which may land a person to prison. The offence of contempt of court is quasi-criminal and the proof of the same is on a higher standard, though not beyond reasonable doubt, but higher than balance of probabilities. See the case of **Bramblevale Ltd 1970 CH 128 at Pg.137**, where **Lord Denning Master of Rolls** stated:-

***“A contempt of Court is an offence of criminal character. A man may be sent to prison for it. It must be satisfactorily proved showing that when the man was asked about it, he told lies. There must be some further evidence to incriminate him”.***

The parties herein are not disputing the issue of service or knowledge of the Court Order. The dispute is whether what the court granted was defied by the Respondent. It is clear that the Court granted an Order of *status quo* prevailing at that time be maintained. The Court did not define what *status quo* was

prevailing then. However, Mr. Kanyi for the Respondent had alleged that the Respondent was the one in possession of the suit property. That allegation was not disputed by the Appellant. It is trite that Court would only punish for contempt of the

Court Order if the said Order is *clear* and *unambiguous*. See the case of *Ochino and Another..Vs..Okombo & 4 Others (1989) KLR*, where the Court held that:-

***“The court will only punish for contempt or breach of injunction if it is satisfied that the terms of the injunction are clear and unambiguous”.***

In the instant case, the Court granted Orders of maintenance of *status quo* that was prevailing then. It was not defined by the Court what was the *status quo* prevailing then, but the Respondent had alleged that she was the one in possession of the suit property. The said Order of *status quo* prevailing was therefore not clear and unambiguous and this Court cannot find and hold that the Respondent is in defiance of the same and thus contempt of court.

As was submitted and relied upon by the Respondent, in the case of *R...Vs...National Environmental Tribunal & Another (2013) eKLR*, the court held that:-

***“Therefore when a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the status takes effect, must be maintained”.***

The Respondent alleged that she was in possession of the suit property. That is therefore the prevailing *status quo* which should be maintained unless the Court had defined the *status quo* in its orders of **9<sup>th</sup> May 2016** and **10<sup>th</sup> November 2016**, which it did not.

Having now carefully considered the instant *Notice of Motion* dated **30<sup>th</sup> November 2016**, by the Appellant/Applicant, the Court finds it **not merited** and it is **consequently dismissed entirely with costs in the cause**. Let the parties herein prepare the Appeal for hearing expeditiously.

It is so ordered.

**Dated, Signed and Delivered at Thika this 13<sup>th</sup> day of October, 2017.**

**L. GACHERU**

**JUDGE**

In the presence of

No appearance for Appellant/Applicant

Mr. Kanyi Kiruchi for Respondent

Timothy - Court clerk.

**L. GACHERU**

**JUDGE**

**Court** – Ruling read in open court in the presence of Mr. Kanyi Kiruchi for the Respondent and absence of Counsel for the Appellant/Applicant though date was taken in court in their presence.

**L. GACHERU**

**JUDGE**

**13/10/2017**