



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MILIMANI LAW COURTS
CIVIL CASE NO. 125 OF 2013

J W R.....PLAINTIFF

=VERSUS=

G G G.....DEFENDANT

RULING

BACKGROUND

1. The applicant is the first wife of the respondent. The two jointly acquired LR No. Kabate/Kibichiku/[particulars withheld] where they set up their matrimonial home. The respondent later became violent and at one time while the applicant was away, the respondent hired a lorry which ferried their households which were taken to the respondent's father's home where the respondent had a house where he used to stay while he was a bachelor. The respondent then removed doors from the matrimonial home. This forced the applicant to move out with her two children to a rental house nearby.

2. The respondent later put back the doors and married a second wife whom he brought into the matrimonial home. This is what forced the applicant to file a suit against the respondent. The applicant filed an application in which she sought an order reinstating her to her matrimonial home. In a ruling delivered on 10th June 2016, Lady Justice Gacheru granted the applicant's prayer for reinstatement into the matrimonial home and further made an order that the respondent was to ensure that his second wife vacates the matrimonial house within a period of 45 days.

APPLICANT'S APPLICATION

3. The respondent's second wife was evicted from the matrimonial home with assistance of police but the respondent brought her back. The applicant has now filed an application seeking committal of the respondent to civil jail for contempt of court. The respondent's advocate was duly served with the application for contempt but there was no response filed.

ANALYSIS

4. I have gone through the application by the applicant and the only issue for determination is whether the applicant has demonstrated that the respondent is in contempt of Court. In an application for contempt, an applicant is expected to demonstrate that there was a valid court order; that the court order was served upon the contemnor or that the contemnor was aware about the same; that the contemnor went ahead to disobey the order.

5. In the instant case, there is a court order which was given on 10th June 2016 and issued on 22nd June 2016. There is evidence that the order was served upon the respondent as confirmed in the affidavit of service by a process server annexed to the application.

CONCLUSION.

6. The applicant has deponed in her affidavit that the respondent's second wife was evicted from the matrimonial home with assistance of police but the respondent brought her back. There is nothing to contradict this averment. I therefore find that the respondent is in contempt of a court order. The respondent had been directed to reinstate the applicant to the matrimonial home and ensure that his second wife is removed from the matrimonial house. The court order was partially executed but the respondent breached the same by allowing his second wife back to the matrimonial house. I therefore make the following orders;-

a. The respondent is found to have disobeyed a lawful court order given on 10th June 2016 and issued on 22nd June 2016.

b. The OCS Kingero Police Station is directed to arrest the respondent and bring him before the court on any week day for him to be dealt with in accordance with the law.

c. The respondent shall pay the costs of this application.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **9th** day of **November 2017**.

E.O.OBAGA

JUDGE

In the presence of;-

M/s Motabori for Mwadumbo for applicant

Court Assistant: Hilda

E.O.OBAGA

JUDGE