



REPUBLIC OF KENYA
IN THE LAND AND ENVIRONMENT COURT AT KITALE
LAND CASE NO. 125 OF 2014

DAVID SIKUKU KONES
PLAINTIFF/APPLICANT

VERSUS

BASHIR TROWET CHEMASWET:.....1ST
DEFENDANT/RESPONDENT

VINCENT WASAMA KIRUNYI :..... 2ND
DEFENDANT/RESPONDENT

RULING:

1. The applicant David Sikuku Kones brought a notice of motion dated 4.6.2015 in which he seeks to have the second defendant/respondent committed to civil jail for a period not exceeding six months. The applicant contends that the respondent has disobeyed the court's orders given on 21.1.2015.
2. The applicant contends that the respondent went to his property and destroyed a house he had put up and sprayed maize growing on it with herbicides. The applicant states that all these activities were carried out between 27.5.2015 and 2.6.2015. The respondent also carried away iron sheets from the demolished house. The applicant therefore wants the court to punish the respondent for going against the orders of the court given on 21.1.2015.
3. The respondent has opposed the applicant's application based on a replying affidavit sworn on 24.8.2015. The respondent denied breaching any court order. He contends that the orders being complained of had been stayed by the court on 22.4.2015 and that the court had ordered that the status quo obtaining before the commencement of this suit be maintained. He further argues that he could not stand and watch as the applicant was putting up a structure on the disputed property yet he had obtained orders from court suspending the orders of 21.1.2015.
4. I have considered the applicant's application as well as the opposition to the same by the respondent. The only issue for determination in this application is whether the respondent is in contempt of the court's order given on 21.1.2015. The applicant in this case had filed a notice of motion dated 15.9.2014. He duly served the respondents with the application but during the hearing, the none of the two respondent's appeared despite having been served. The application was therefore granted as the same was not opposed. The orders granted on 21.1.2015 inter-alia included injunctive orders restraining the respondents from interfering with the suit property.

5. The respondent later moved the court with an application seeking to set aside the orders of 21.1.2015. on the grounds that he had not been served with the application resulting in those orders. The respondent's application came up for hearing on 22.4.2015. The applicant's lawyer was not ready to proceed as he was said to be out of the country. He sought for adjournment through another counsel. The adjournment was not opposed by the respondent's lawyer who asked that interim orders be granted pending determination of the application. Interim orders were then granted staying the orders of 21.1.2015 and an order of maintenance of status quo prevailing before the commencement of this suit.

6. The orders of 22.4.2015 effectively stayed those of 21.1.2015. The applicant put up a temporary structure on the disputed property. This is the structure which the respondent demolished on the ground that there were orders given in his favour that the status quo prevailing before the commencement of the suit be maintained. The respondent did this between 27.5.2015 and 2.6.2015. During this time, the orders of 21.1.2015 were not operational as the same had been stayed. The respondent could therefore not be blamed for breaching orders which had been stayed. The respondent's actions may have been criminal because he took the law into his own hands and destroyed properties of the applicant but he did not breach any court order as the same had been stayed.

7. The respondent's application seeking to set aside the orders of 21.1.2015 was subsequently dismissed on 14.7.2015. This means that the orders of 21.1.2015 which had been stayed became operational as from 14.7.2015. There was therefore no order in force capable of being breached as at the time being complained of. I therefore find that the applicant's application has no merits. The same is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, signed and delivered at Kitale on 18th day of January,2016.

E. OBAGA

JUDGE

COURT - Ruling delivered at 3:12PM in the absence of parties who were of today's date.

Court Assistant – Isabellah.

E. O. OBAGA

JUDGE.