



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NYERI**

**ELC NO. 195 OF 2014**

**JOSEPH KABURU KIRAGU.....PLAINTIFF/RESPONDENT**

**-VERSUS-**

**DUNCAN NDUNG' U NDIRANGU.....DEFENDANT/APPLICANT**

**RULING**

1. On the 24th day of March, 2015 this court found the plaintiff/ respondent to have been in contempt of the order issued by this court on 19th September 2014, that;

(a) Pending the hearing and determination of this application, the defendant/respondent, by himself, his servants, agents or otherwise howsoever, be and is hereby restrained from alienating and/or further interfering with the plaintiff/applicant's quiet and peaceful occupation and use of land parcel number NYERI/WATUKA/1670 and

(b) The Notice of Motion dated 18th September, 2014 be served upon the defendant/respondent and the same be heard interparties on 8th October, 2014 by this court (read Environment and Land Court, Nyeri) and ordered him to show cause why he should not be punished for his contemptuous act.

2. In compliance with the order of the court, the plaintiff swore and filed an affidavit sworn on 15th June, 2015. In that affidavit, the contemnor deposes that he has never set foot on the suit property since the ruling was delivered by this court on 24th March, 2015 and the allegations made by Kevin Muchiri Wambui referred to one Gathu Gatore who was unknown to him with the sole intention of potraying him in bad light before this court and delaying the conclusion of this matter.

3. When the notice to show cause came up for hearing, counsel for the contemnor, **Mr Wahome**, referred the court to paragraph 2 of the statement by the Joseph Kaburu Wambui where he had stated that;

**" That after 12/3/2015 the contemnor and another person unknown to me came into the parcel of land against the court orders and threatred my grandson"**

4. It was Mr Wahome's contention that the above statement exonerates the plaintiff since the court delivered its ruling on 24th March, 2015 showing clearly that the plaintiff did not visit the suit property after the delivery of the ruling.

5. In response, counsel for the defendant **Mr Wa Gathoni** pointed out that this was a clear case for contempt as the first order was issued in September, 2014 and was still in force even as at 12th March,

2015.

### **Punishment for contempt**

6. In the case of Sam Nyamweya & 3 others v Kenya Premier League Limited & 2 others [2015] eKLR it was observed:-

**“The power to punish for contempt is an important and necessary power for protecting the cause of justice and the rule of law, and for protecting the authority of the court and the supremacy of the law.”**

7. In the case of Board of Governors Moi High School Kabarak vs. Malcolm Bell & Another, (Supreme Court PETITION NOS 6&7 OF 2013, the Supreme Court of Kenya stated:-

**“ ...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. It is about assuring a party who walks through the justice door with a court order in his hands that the order will be obeyed by those to whom it is directed..... A court order requiring compliance is not a mere suggestion or an opinion or a point of view. It is a command that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance should never be an option.”**

8. In the case of Kenya Tea Growers Association Vs Francis Atwoli and 5 Others [2012] eKLR Lenaola J cited with approval the case of Clarke and Others Vs Chadburn & Others [1985] 1All E.R (PC), 211 in which the court observed that:

**“I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal....even if the Defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it.”**

9. In the case of Equity Bank Ltd v. Bryan Yongo & Another (2014)eKLR Gikonyo J. stated:-

**“Any person found to be in contempt of court may be punished in the court’s discretion and in other ways apart from Committal to jail. See the case of *Compania Sud Americana De Vapores Sa v Hin-Pro International Logistics Limited (2013) EWHC (COMM)*. See also the *Black’s Law Dictionary* that contempt is usually punished by a fine or imprisonment. Accordingly, each of the Respondents will pay a fine of Kshs. 500,000 within seven (7) days of today. In default of the fine; 1) the company’s property will be attached and sold to recover the fine; and 2) Mr. Bryan Yongo will serve a jail term of 30 days.”**

### **Analysis and determination**

10. Whereas in his affidavits the contemnor was merely supposed to address this court on the reasons why he should not be punished for his contemptuous conduct, I realise that he proceeded as if he is challenging the court’s finding regarding his alleged conduct. Be that as it may, I note that he reluctantly pleads for leniency on the grounds that he never set foot on the suit property after the ruling by the court and that these allegations are only meant to portray him in bad light in the eyes of the court and delay the hearing of the case.

11. I have considered the circumstances of this case and the import of punishment for contempt. since the court has already found the contemnor to be in contempt of the court, and given the fact that the proceedings for punishment in respect of the said contemptuous act are not an appeal or application for review of the decision of this court on the matter, it was not open for the contemnor to challenge the court's finding on that matter or even introduce new evidence concerning the application for contempt, as he has done in these proceedings.

12. All what the contemnor was supposed to do was to give his statement in mitigation. Be that as it may, as pointed out above, I note that the contemnor has reluctantly pleaded for leniency on the grounds set out herein above.

13. Having considered the explanations offered by the contemnor, the law applicable to punishment on contempt and the peculiar circumstances of this case, I make the following order:-

The contemnor is fined Kshs. 20,000/= for wilful disobedience of the orders of this Court issued on 19th September, 2014 and in default to serve 15 days in jail.

Orders accordingly.

**Dated, signed and delivered at Nyeri this 15th day of February, 2016.**

**L N WAITHAKA**

**JUDGE**

In the presence of:

Mr. Macharia for the applicant

Mr. Wahome Gikonyo for the respondent

Court Assistant - Lydia