



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NYERI

ELC NO. 74 OF 2013

JAMES MUNENE NDUMBI PLAINTIFF/RESPONDENT

-VERSUS-

SOSPETER MURIMI KARITU ... DEFENDANT/APPLICANT

RULING

1. On the 2nd day of November, 2015 this court found the plaintiff/ respondent to have been in contempt of the order of maintenance of status quo issued 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 two affidavits, sworn on 6th November, 2015 and 16th November, 2015. In those affidavits, the contemnor deposes that he had no intention of disobeying the order; that due to the suit herein he has suffered irreparably and that any action against him would amount to double punishment. The contemnor has further deposed that the fact that this court has dispensed with the order he is accused of having violated is an indication that there is nothing to answer to.
3. When the notice to show cause came up for hearing, the contemnor denied being in contempt of the court order hereto and, in that regard, explained that the photographs relied on to find him to be in contempt are in respect of trees felled down in a neighbouring farm. He submitted that the fact that he had been attending court and complying with its orders shows that he is not a person who disobeys court orders. The contemnor reiterated his contention that he has undergone alot of suffering owing to the suit herein and the activities of the defendant and urged the court not to punish him.
4. Counsel for the defendant/applicant, **Mr. Mwai**, submitted that the contemnor has raised issues not raised in his affidavit in reply to the application for contempt and pointed out that the contemnor had changed his account of what happened. In this regard, he pointed out that the contemnor did not, in his replying affidavit, allege that the cut trees were in a neighbour's parcel of land.
5. With regard to the plaintiff's contention that he has been complying with the orders of the court, Mr. Mwai stated that it was the court that was pushing the contemnor to comply with its orders.
6. As for the contemnor's contention that he has suffered and continues to suffer owing to the defendant's claim to the property hereto, Mr. Mwai submitted that those issues are not subject of this application.
7. Mr. Mwai further submitted that the contemnor has already been found to be in contempt of the

court and urged the court to punish the contemnor for the said contemptuous conduct.

8. In a rejoinder, the contemnor reiterated his contention that owing to the suit herein, he has lost his businesses and reiterated his plea for leniency.

Punishment for contempt

9. 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.”

10. 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.”

11. 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.”

12. 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

13. 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 had no intention to disobey the said order of the court, that he has been complying with the orders of the court, that he has already suffered alot owing to the suit and

that any order for punishment against him will be unjust.

14. The plea by the plaintiff for leniency was opposed by counsel for the defendant on the grounds cited herein above.

15. I have considered the special circumstances of this case and the import of punishment for contempt. Whilst it is true that the plaintiff has succeeded in getting the orders of status quo issued against him lifted, the lifting of those orders does not mean that he should not be punished for disobedience of those orders when they subsisted.

16. Since the order for deposit of the proceeds of sale of the timber was not issued as punishment for the alleged contemptuous conduct but for preservation of the subject matter of the suit pending hearing and determination of the dispute, I am unable to agree with the plaintiff that if, he is punished on account of his contemptuous conduct, he would have been subjected to double punishment.

17. In the circumstances of this case, 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.

18. 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.

19. 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 orders:-

a). The contemnor is fined Kshs. 30,000/= for wilful disobedience of the orders of this Court issued on 14th November, 2014 and in default to serve 15 days in jail.

b). The amount deposited in court pursuant to the order of the court issued on 21st January, 2015 be forthwith returned to the contemnor.

Orders accordingly.

Dated, signed and delivered at Nyeri this 8th day of February, 2016.

L N WAITHAKA

JUDGE

In the presence of:

Mr. Mwai h/b for Ms Madahana for the defendant

N/A for the plaintiff

Plaintiff – present

Court assistant - Lydia