



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 99 OF 2015

JEPNGETICH KIPLAGAT KISORIO.....PLAINTIFF

VERSUS

MORAA MUKUA.....DEFENDANT

RULING

1. The Plaintiff/Applicant filed a Notice of Motion dated 21/11/2015 seeking to commit the Defendant/Respondent to jail for a period not exceeding six months for contempt of court. The Applicant had filed suit against the Respondent on 28/7/2015. The Applicant had sought an order of injunction restraining the Respondent from proceeding with construction of a house she had started erecting on the Applicant's property known as **Plot No. 284** at **Zea Settlement scheme** also known as **ADC Zea**.
2. The Applicant was given a temporary injunction restraining the Respondent from further construction pending

inter-partes hearing. The suit papers together with the application and the extracted order were served upon the Respondent who briefly stopped construction but later on went on constructing the house. This is what prompted the Applicant to file the present Application.

3. The Respondent who had been duly served with all court documents neither entered appearance nor filed any response to either the application for injunction or application for contempt. The Applicant therefore asks the court to punish the Respondent for disobedience of a court order.
4. In an application for contempt, the Applicant must demonstrate that there was a valid court order given by a court; that the said court order was served upon the contemnor; that the contemnor proceeded to disobey that order. It is also the practice that the order served must contain a penal clause warning the contemnor of Penal consequences should there be breach of the court order.
5. In the instant case, there was a valid court order given on 30/7/2015 requiring the contemnor to stop further construction of the house she had started putting up on the disputed land. There is also evidence that the said order was served upon the contemnor. The order contained a penal notice warning the contemnor of penal consequences in case of breach.
6. There is also evidence that despite the court order stopping further construction, the contemnor went on to construct the house. There are photographs of a house which had just been started before the Applicant obtained injunction orders. There is also a photograph showing the same house which was now almost complete. This clearly shows that despite the contemnor having been stopped from further construction, she ignored the order and went on with construction.
7. I find that the Respondent is in contempt of a valid court order. She should accordingly face the consequences of such breach of the court order if the dignity of the court is to be guarded. As the contemnor is not before the court, I direct the OCS Kitale police station to arrest the contemnor

and bring her before the court so that she can be dealt with in accordance with the law.
Respondent to pay costs of the application.

It is so ordered.

Dated, signed and delivered at Kitale on this 31st March 2016.

E. OBAGA

JUDGE

In the presence of M/s Munialo for Applicant.

Court Assistant – Isabellah

E. OBAGA

JUDGE

31/3/16