



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KERICHO

MISCELLANEOUS CIVIL SUIT NO. 41 OF 2013

RAELI TAPSABEI..... PLAINTIFF

VERSUS

DAVID RONO.....DEFENDANT

RULING

(Punishment for contempt of court; defendant disobeying order of injunction; defendant fined Kshs. 750,000/= or in default to serve 3 months in jail)

Through a ruling delivered on **2 October 2015**, I did hold the defendant to be in contempt of an order of injunction that was issued on **25 September 2013**. The order directed the defendant to stop the construction of a building on land that is under dispute. Despite the order, the defendant did proceed with construction.

On the day that I delivered the ruling, the defendant was not present. Neither did he appear on the date that I had set aside for mitigation. On **26 February 2016**, I was forced to issue a warrant for his arrest directed at the Inspector General of Police.

On **25 April 2016**, the defendant was brought to court under escort by Lieutenant Erick Khalwale Amwoga of Kenya Army Special Forces and Corporal John Nyambane of the Military Police. Apparently the defendant is an officer of the Kenya Defence Forces hence the said escort. It was made clear that the defendant had been brought to court under arrest.

I allowed Mr. Orina, counsel for the defendant to mitigate. He submitted that the defendant is an officer of the Kenya Defence Forces, based in Somalia under AMISOM. He submitted that the defendant has since stopped construction as directed. He offered an apology on behalf of the defendant and asked for the court's leniency. He submitted that in the event that he is jailed, he will automatically lose his job. It was further submitted that the defendant is a family man.

I have considered the submissions of counsel. The defendant has already been held to be in contempt. He failed to voluntarily surrender himself to the jurisdiction of this court and had to be brought to court under arrest. I do take note that the defendant is an officer serving with the Kenya Defence Forces. I would have thought that as an officer, he does understand the meaning of a command and the importance of following orders, including court orders. In as much as he may stand to lose his job and he is a family man if jailed, he ought to have thought about the consequences of his actions. On my part I have little sympathy for any person who disdains orders of the court irrespective of his/her status. The dignity of the courts must be respected by all persons.

The defendant breached an order of injunction issued by the Environment and Land Court. In my view,

the court has an option of utilizing **Section 29** of the **Environment and Land Court Act, Act No. 19 of 2011**, or **Order 40 Rule 3** of the **Civil Procedure Rules**. They provide as follows :-

Section 29, Environment and Land Court Act :-

Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.

Order 40 Rule 3 (Consequence of breach) :-

- 1. In cases of disobedience, or of breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release.*
- 2. No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.*
- 3. An application under this rule shall be made by notice of motion in the same suit.*

It is to be noted from the above and especially from the provisions of **Section 29** of the **Environment and Land Court Act**, that a disobedience of a court order is a serious matter. I on my part do not take such disobedience lightly.

In my discretion, I opt to utilize **Order 40 Rule 3**. Having taken into account his mitigation, and the nature of the actions for which the defendant was in contempt, and the provisions of **Order 40 Rule 3**, I do fine the defendant the sum of Kshs. 750,000/= for being in contempt of court. In default, the defendant to serve 3 months in jail. I order the defendant to immediately be incarcerated and escorted to jail and start serving the said sentence unless and until he pays the fine so directed. I further order, that the building built by the defendant not to be utilized until this suit is finalized.

It is so ordered.

Dated, Signed and delivered on this 29th day of April, 2016

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

PRESENT:

Mr. Mwita for Plaintiff

Ms Chelimo for defendant/contemnor

Court Assistant: Mr. Kenei