



OREPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 183 OF 2012

FELISTUS MULIRO NANJALA.....PLAINTIFF

VERSUS

ROBERT KOECH.....1ST DEFENDANT

ROSALINE JEMELI KOECH.....2ND DEFENDANT

YUSUF KIPTUM KOECH.....3RD DEFENDANT

RULING

Felistus Muliro Nanjala, (hereinafter referred to as the applicant) brings this application against ***Robert Koech, Rosaline Jemeli Koech and Yusuf Kiptum Koech (hereinafter referred to as the respondents)*** for an order that the 1st respondent be committed to jail for six (6) months for contempt of court order and to compel him to obey the law. Moreover, that the 1st respondent do pay a fine of Kshs.1,000,000/= and to restate the property to the original state of the house occupied by the plaintiff's tenant as at 22.9.2015 to-date of the first contempt.

That the 1st respondent herein be compelled to deposit in this court Kshs.2,000,000/= pending the hearing and determination of this application inter-partes and pending the hearing and determination of any subsequent motion for contempt. That upon grant of prayers (d) and/or (e) and/or (f) above, the court be pleased to order the attachment of any property and/or accounts in the name of the 1st defendant/respondent in any bank to prevent the ends of justice from being defeated and/or satisfy the court orders.

The application is made on grounds that the plaintiff obtained restraining orders against the defendants in 2005 pending the hearing and determination of the suit. The terms of the order were that the defendants, by themselves, agents, servants, and/or anybody acting under them be and are hereby restrained by was of an injunction from selling, disposing of, transferring, charging, mortgaging, offering as security, leasing, constructing on, depositing materials on, interfering with the structures thereon put up the plaintiff, evicting the plaintiff or in any other manner whatsoever interfering with quiet enjoyment and possession of the plaintiff of the parcel of land Eldoret Municipality/Block 21 (King'ong'o) 3253 pending the hearing inter parties and pending the determination of the suit herein. That pending the hearing and determination of the suit herein, there be temporary orders of injunction in terms of prayer 1 above, Mutatis Mutandis.

On the 9.6.2005, the defendants/respondents were duly served as ordered by the court and in particular, the 1st defendant/respondent whom upon being served observed compliance and it was not until the 22nd day of September, 2015 when the 1st defendant/respondent moved onto the suit property and caused destruction in total disregard of the court order. The applicant believes that the 1st defendant/respondent's actions are unlawful and ought to be stopped and he be punished. That the 1st defendant is obligated by

law to obey court orders regardless of his position so far as the court orders is concerned. The 1st defendant has blatantly disregarded the court order and proceeded to cause damage and/or destroy the premises and/or houses the plaintiff's tenant resides in Eldoret Municipality/Block 21 (King'ong'o) 444 and Eldoret Municipality/Block 21 (King'ong'o) 3253.

It is alleged that the 1st defendant on 22.9.2015 in the company of Administration Police dressed in anti riot gear and over forty (40) youths armed with crude weapons moved on the plaintiff's compound and caused massive destruction leaving the plaintiff's tenant homeless in blatant disregard of the court orders issued in this matter on 9.6.2005. The acts allegedly committed by the 1st defendant in contempt are pulling down the house and removing iron sheets from the house and therefore causing destruction on the premises/houses. Moreover pulling down the walls of the plaintiff/applicant's house and depositing debris and dirt all over the same. The respondent is accused of interfering with the plaintiff's tenants occupation of the houses on the suit property by pulling out the doors and windows and carting them away to unknown destination and in the process exposing the entire houses occupied by the plaintiff's tenants. The respondents Interfered with the plaintiff's occupation of the houses by exposing the plaintiff to the risk of theft and harsh weather conditions.

The applicant's grievance is that through the disobedience of court orders by way of barbaric acts, the 1st defendant have caused wanton and untold destruction to the plaintiff's house and tenant and the plaintiff has been unable to maintain her tenant in the house due to the damage caused by the respondents and therefore it is only fair and just that the orders sought issue in the best interest of justice. The acts of the 1st defendant have exposed the plaintiff to financial difficulties and emotional stress that has lead to the plaintiff's health to deteriorate. The 1st defendant has all along been represented in this matter and has been aware of the existence of the orders of this Honourable Court made on 9th June, 2005. The 1st defendant has barred the plaintiff access to her compound (suit property) in blatant disregard of the court order aforesaid. That it is proper and in the interest of justice to uphold the rule of law by having the 1st defendant punished accordingly.

The application is supported by the affidavit of Felistus Muliro Nanjala who states that upon the grant of injunction orders aforesaid, her advocate extracted an order to that effect and caused it to be served upon the 1st defendant/respondent herein who accepted service but declined to sign. That she has had issues with the 1st defendant whereby the 1st defendant in total disregard of the orders issued by this Honourable court has kept interfering with her occupation and/or that of her tenants. That on 22.9.2015, the 1st defendant in the company of over forty (40) youths and Administration Police officers came to the suit property, destroyed and demolished her house, fence, fenced off her entrance and/or her gate thereby barring her and her tenant access to her compound hence this application.

That it is therefore crystal clear that the 1st defendant herein has contravened this Honourable Court's orders of 9.6.2005 therefore liable for punishment as to fine and imprisonment. The actions of contempt as captured herein above have caused her mental anguish and/or psychological stress leading to deterioration of her health and therefore there is need for an order for restitution in the state the suit properties and the houses were in prior to the destruction of 22.9.2015. This court has power to hear and determine this matter in the interest of justice and justice for all. There is need for this court to grant the orders sought in order to uphold the dignity of this court and to prevent further damage of the plaintiff's property.

That she is informed by her advocate Mrs. A. L. Khayo which information she verily believes to be true that under order 40 Rule 3 of the Civil Procedure Rules, this Honourable court has power to punish persons who disobey its orders like in this instance case and can make such further orders as to the attachment of the disobeying party's property hence she prays that the orders sought herein be granted to uphold the dignity of this Honourable court. That unless this Honourable court makes the orders sought, she will greatly be prejudiced since she will stand evicted and/or homeless unlawfully and without being given an opportunity to be heard which is against the rule of natural justice.

The respondent Robert Koech filed a replying affidavit stating the applicant's application is frivolous, a nonstarter and lacks premises, hollow, bad in law, waste of courts precious time, lacks merit and ought to

be dismissed with costs. That he is informed by his advocate on record which information he verily believe to be true that court's orders cannot be read in piece meal and by selecting specific working only so that the suit your case but an order should be read wholesomely. That he is not and he has never disobeyed the orders of this Honourable court.

On 22nd September, 2015, as alleged by the plaintiff, he got wind that the premises on the said parcel of land had been demolished by youths and administration police officers. That upon inquiring on the reasons for the demolition, he was informed that the occupants of the said structures were running a brothel in the structure which was true and within public knowledge that the occupants were involving themselves in selling illicit brews and second generation alcohol. That since the president had declared a total war on illicit brews the administration and the youth confronted the buggers and flattened the structures because of their illicit activities. That in fact the structures were bought down under the watchful eye of administration police officers and he has no powers to influence and/or order the administration police to participate in such an action. That on that fateful day, he was not and he did not participate in the legalized operation undertaken by the Government. That further, this Honourable court gave an order of injunction on the 9.6.2005, the same order was conditional on the premises that the main suit was to be fixed for hearing by the 31st December 2005, failure to which the injunctive orders granted were to lapse by the said 31st December, 2005. That the suit was not set down for hearing by the 31st December, 2005 as the Honourable Judge had ordered and thus it does not need a rocket scientist to interpret the orders to the plaintiff/applicant.

That it is laughable to knock the doors of justice asking for enforcement of an order after it had been given ten years later while the constitution and the civil procedure rules frown at extension of an interlocutory injunction if the same is not determined within a period of twelve months from the date of the grant. The plaintiff/applicant therefore cannot further claim that the structures on the land belongs to her and yet she has executed an agreement selling the property to another third party. That the applicant/plaintiff does not stay on the suit land and stays at her home in Kahoya Estate, Eldoret town and she is estopped from praying for the orders being sought herein.

The applicant submits that the 1st defendant had knowledge of the court orders made on 9.6.2005 which were still in force on 22.9.2015. The applicant relies on *Kenya Tea Growers Association Vs Francis Atwoli & 5 Others Petition No. 64 of 2010 where the court held that;*

“In the case before me, I am more than satisfied that even at higher level of beyond reasonable doubt, when an individual has been served with and/or has knowledge of a court order but not only ignores it but in fact incites others to do the same, the threshold for contempt has been met. Francis Atwoli in fact went further to arrogate himself the decision to determine when the strike should end despite the fact that the court order had stopped it...his contempt was obvious and his conduct and words can attract no other finding.”

The respondent on his part argues that the orders made on 9.6.2005 lapsed on 31.12.2005 due to failure by the applicant to fix the matter for hearing as ordered.

Moreover, that temporary injunction cannot last for more than 12 years as for Order 40 Rule 6 of the Civil Procedure Rules, 2010.

I have considered the application and do find that on the 9.6.2005, the honourable court made an order issuing a temporary injunction pending the hearing and determination of the suit. However, he ordered that the main suit be fixed for hearing by 31.12.2005, failure to which the injunctive orders granted would lapse on 31.12.2005. The respondents argued that the order lapsed on 31.12.2005 when the applicant failed to fix the matter for hearing. The applicants argue that the order was in force and therefore, the respondents should be punished for contempt. I do find that on the 30.11.2005, parties herein appeared before the Judge and recorded the following consent:

“By consent, this case to be heard on 8.2.2006 and orders of injunction to remain in force in accordance with Hon. Justice's Dulu's ruling as on 9.6.2005.”

I do find that the consent order reinstated the order by Dulu made on 9.6.2005. I do not agree with the respondent that the order lapsed.

The argument by the respondent that the temporary injunction granted by the court on 9.6.2005 lapsed 12 months after issued in is also defeated by the fact that the said order was varied by the consent entered on 30.12.2005 when it was agreed that the matter be heard on 8.2.2006. By fixing the matter for hearing on 8.2.2006, the applicant met his obligations to fix the hearing date. Moreover, the temporary injunction was to lapse on determination of the suit and therefore as at the date of the alleged contempt the order was in existence.

Lastly, the respondent argues that there is no evidence that the respondent is in contempt of court as the alleged act of trespass was done by police officers. I have carefully considered the evidence of the applicant against the evidence of the respondent and do find that there is evidence that the plaintiff's house was destroyed extremely by persons who had the intention of inflicting serious damage to the property. Their intention was not only to damage the property but to evict him. I do not believe the 1st defendant when he states that the plaintiffs were running a brothel in the structure which he believes is true and with public knowledge as he has not demonstrated by evidence that the plaintiffs were running a brothel. He has not shown that the plaintiff was charged with operating a brothel and selling illicit brews.

This court finds that the 1st defendant is a litigant who took advantage of the presidential directive to disobey a court order that he was aware of but thought that it had lapsed and therefore, should be punished.

To demonstrate the importance and seriousness with which the courts will deal with any conduct that may be deemed or found to be in contempt of court of prejudicial process, it may be necessary to look at some decisions of the subject.

In *Gubabchand Papatial Shah & Another, Civil Application No. 39 of 1990 (unreported), the Court of Appeal said:*

“...It is essential for the maintenance of the Rule of Law and good order that the authority and dignity of our courts are upheld at all times. This court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnor...”

In *Hadkinson v Hadkinson (1952) 2 All ER 567, it was held that:*

“It is plain and unqualified obligation of every person against or in respect of who an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.”

In the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 others [2013] eKLR, Industrial Court at Nairobi, Petition Number 23 of 2013* where the learned judge Ndolo J. observed as follows;

“ A court order is not a mere suggestion or an opinion or a point of view. It is a directive 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 and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.

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.”

As was held in the case of Econet Wirelss Ltd Vs Minister for Information & Communication of Kenya & Another [2005] eKLR,

“Where an application for committal for contempt of court orders is made the court will treat the same with a lot of seriousness and urgency and more often will suspend any other proceedings until the matter is dealt with and if the contempt is proven to punish the contemnor or demand that it is purged or both. For instance an alleged contemnor will not be allowed to prosecute any application to set aside orders or take any other step until the application for contempt is heard. The reasons for this approach are obvious- a contemnor would have no right of audience in any court of law unless he is punished or purges the contempt.”

I do find the 1st defendant in serious contempt of the court order and do order that he be imprisoned for a period of 30 days. In the alternative, he is hereby ordered to pay fine of Kshs.100,000/=. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 1ST DAY OF APRIL, 2016.

ANTONY OMBWAYO

JUDGE