



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 235 OF 2015**

**OLIVER LANGAT PTALLAH.....1ST PLAINTIFF**

**GEOFFREY NDUNGU MURIRA.....2ND  
PLAINTIFF**

**CAROLINE KIGEN.....3RD PLAINTIFF**

**PRISCAH ACHOLA INDAKWA.....4TH  
PLAINTIFF**

**VERSUS**

**COUNTY GOVERNMENT OF UASIN GISHU.....1ST  
DEFENDANT**

**MINISTRY OF LANDS HOUSING & PLANNING (UASIN GISHU COUNTY).....2ND  
DEFENDANT**

**THE CHIEF LAND REGISTRAR, UASIN GISHU COUNTY.....3RD  
DEFENDANT**

**ATTORNEY GENERAL.....4TH  
DEFENDANT**

**RULING**

The application before this court is dated 8.9.2015 and seeks orders that the 1st and 2nd defendants/respondents, its servants and/or agents namely County Secretary, Uasin Gishu County, Chief Officer, Lands, Housing and Planning Officer, Uasin Gishu County and Chief Security Reinforcement Officer, Uasin Gishu County do show cause why they should not be cited for contempt in blatantly disobeying the court order issued by this Honourable Court on the 19th August, 2015. That in the alternative, the 1st and 2nd defendants do pay the damages caused from the illegal demolition of the plaintiff's/applicant's houses. That defendants/respondents to pay costs of this application.

The application is based on grounds that on the 19th August, 2015, this Honourable Court issued injunctive orders against the defendants/respondents that a temporary injunction be and is hereby issued restraining the defendants/respondents, their agents and/or servants and/or assigns from dealing with and/or from any other way interfering with the plaintiffs/applicants quiet possession, use and/or enjoyment and to stop unlawful demolition of the plaintiffs/applicants buildings/houses and/or structures/developments situated on Land Registration Nos. Eldoret/Municipality Block 14/2235, 14/2236, 14/2237 and 14/2234 and/or doing any act that is inconsistent with the plaintiffs'/applicants'

rights as the registered proprietors of the suit plots pending the hearing and determination of this application inter-parties. The defendants/respondents through their officers or agents or servants were duly served with the court orders issued on the 19th September, 2015 with notice of penal consequences or notice.

That on the 5th day of August, 2015, being a weekend (Saturday), the 1st and 2nd defendant/respondent through the authority of the County Secretary and the Chief Officer of the 2nd defendant/respondent demolished the houses of the plaintiffs/applicants oblivious of the existence of the court orders in place. That the 1st and 2nd defendants/respondents through their officers and/or employees conduct is deliberated and calculated to lower the dignity and authority of this court. That it is apparent that the contemnors be cited for contempt of court as they have undermined the authority and dignity of the court and must be dealt with firmly so that court's authority are not brought into disrepute.

The application is supported by the affidavit of Oliver Langat Ptallah who states that he duly followed the rightful procedures in obtaining the Title documents in his favour from the 1st, 2nd and 3rd respondents. The authorized agents and/or servants or employees of the 1st, 2nd and 3rd defendants/respondents approved the transfer of Title deed in his favour without any objection that the suit plot was reserved for public utility purposes and further approved the construction of the building by the County Housing and Physical Planning department.

The plaintiff submits that the 1st and 2nd defendants, agents were duly served with the court orders issued with penal notice or consequences as evidenced by an affidavit of service as sworn by Robert Omenge Onduko that the County Secretary of the County Government was served with the order.

That the County Secretary upon service with court papers/pleadings usually refers the process server to the legal officer for service. That the 2nd defendant/respondent was duly served through its in-charge (the Chief Officer) one Mr. Patrick K. Mutai, however, he refused to sign and also referred the legal documents from court to be served or received and signed by the County Legal Advisor (Legal Department) as per the rules of the Uasin Gishu County Government.

That to buttress service and knowledge of the existence of the orders, the 2nd defendant through its Chief Officer has deponed in paragraph 9 that it is him who engages in demolition and/or approval of the same hence he acted with impunity in the demolition of the houses despite being aware of the court order.

That further, the Chief Officer having confirmed that suit lands were public utilities and having sent the bulldozers to pull down the houses on a weekend (Saturday), is a clear indication that he indeed acted in total disregard of the injunctive orders in place. That the plaintiffs had observed due diligence while acquiring the suit plots and were cleared by the 3rd defendant (Registrar of Lands) and also the County Physical Planning Officers approved the construction plan. It is clear from the affidavit of service by the Chief officer of the 2nd defendant that he does not respect the orders issued by any court especially touching on any property of Uasin Gishu County Government. The 1st and 2nd defendants/respondents have blatantly ignored to obey or comply with the court order and blatantly demolished the plaintiffs' houses. The respondents, through its servant/agent and/or managers' conduct is deliberate and calculated to lower the dignity and authority of the court. That it is apparent that the contemnors be cited for contempt of court as they have undermined the authority and dignity of the court and must be dealt with firmly so that court's authority are not brought into disrepute.

The applicant relies on Order 40, Rule 3(1) of the Civil Procedure Rules, 2010 which provides that in cases of disobedience or breach of law of an order, 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. The plaintiff produced photographs showing the demolition of houses as evidence that the order was breached.

The defendant on the other hand submits that it is not disputed that there exists a valid court order issued on 19.8.2015, however, the applicant has not demonstrated that the respondents were aware of the court order and that the same was breached.

I have considered the application, the affidavits on record and submissions from both counsels and do find that the applicant has demonstrated to the court's satisfaction that there was a valid court order issued on 19.8.2015 whose import was a temporary injunction restraining the defendants/respondents, their agents and/or servants and/or assigns from dealing with and/or from any other way interfering with the plaintiffs/applicants quiet possession, use and/or enjoyment and to stop unlawful demolition of the plaintiffs/applicants' buildings/houses and/or structures/developments situated on Land Registration Nos. Eldoret/Municipality Block 14/2235, 14/2236, 14/2237 and 14/2234 and/or doing any act that is inconsistent with the plaintiffs/applicants' rights as the registered proprietors of the suit plots pending the hearing and determination of this application inter-parties.

I have looked at the affidavit of Robert Omenge Onduko and do find that the Legal Officer of the Uasin Gishu County Government was served with the order and therefore, it is assumed that as an officer of the court, he should have advised the County Government of the import of the court order. However, he is not cited for contempt and therefore cannot be punished.

Moreover, it is not clear who the applicants seeks to be committed to jail for contempt as the 1st defendant is County Government of Uasin Gishu which is a body corporate and therefore, cannot be cited for contempt. The 2nd defendant is the Ministry of Lands Housing and Physical Planning, Uasin Gishu County and not a person that can be cited for contempt. The 3rd and 4th defendants are State organs and therefore cannot be cited for contempt. In a nutshell, the plaintiff has failed to cite a person who can be punished for contempt of court as required by law.

This court finds that there is evidence of destruction of the property despite the existence of the court order, however, there is no evidence that the same was served on the persons responsible at the County Government. The upshot of this is that the application is dismissed with costs.

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

**ANTONY OMBWAYO**

**JUDGE**