



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 296 OF 2013

JOHN CHEMWOLO CHEMITEI.....PLAINTIFF

VERSUS

MARY CHERUIYOT.....DEFENDANT

RULING

The application is dated 21.1.2016. The applicant seeks orders that the respondent be committed to jail for a period of six months for being in contempt of the court order dated 9.11.2015. The application is based on grounds that this Honourable Court adopted a consent order recorded by parties on 9.11.2015 as an order of the court however the suit herein has not been heard and determined as per the consent order that was recorded and adopted by this court. That the defendant/applicant has duly submitted to the court's jurisdiction and is hereby willing and/or has demonstrated her commitment to obey and abide by the said order.

That the plaintiff/respondent has arbitrarily and/or unilaterally contravened the court order by refusing, ignoring and/or neglecting to give/surrender thirty (30) bags of maize 90 kg each to the defendant/applicant as consented in court in total disregard and/or contravention of the court order of 9.11.2015 to the exclusion of the defendant/applicant. The plaintiff/respondent has not in any way sought to review and/or challenge the said court order and therefore it is fair and just that the plaintiff/respondent be held in contempt of court.

The plaintiff/respondent has further invaded and proceeded to fence the defendant/applicant's portion of land with off-cuts and has mobilized the support of his sons and are daring/threatening the defendant/applicant. The plaintiff/respondent is applying orthodox means yet the order was by consent of both parties and the plaintiff/respondent was warned by this Honourable court in advance. The plaintiff's/respondent's actions amounts to an affront to the authority of the law. That the court orders are not issued in vain and must be obeyed.

That the plaintiff/respondent has disobeyed two other court orders and contempt proceedings were compromised considering relationship between the parties. The defendant/applicant was granted leave by this court to commence these proceedings on 16.12.2015.

The applicant believes that the defendant/applicant is poised to suffer irreparable loss and damage in the event this application is not allowed. That this application is brought timely for justice to prevail and in utmost good faith.

The application is supported by the verifying affidavit wherein the applicant states that she is aware as a matter of fact that this Honourable court adopted a consent order recorded by parties herein on 9.11.2015 as an order of the court that the plaintiff was to surrender/give thirty (30) of maize of bags of 90 kg each

to herself.

That she is aware as a matter of fact that the said consent order provided the terms and obligations to be met by the parties so as to ensure compliance with the order and further for preservation and maintenance of the suit land being Karuna/Karuna Block 1 (Tilatil) 120 and that the plaintiff/respondent has defied the said consent order of 9.11.2015 and the defendant/applicant to commence contempt proceedings against him on 16.12.2015. She confirms that she has compromised two contempt proceedings arising from orders issued on 12.7.2013 and 12.3.2015.

That subsequent to the court order, she confirms that she has made all efforts possible to ensure full cooperation with the plaintiff/respondent so as to comply with the order and further encourage reconciliation but the plaintiff/respondent has remained adamant and arrogant and that in total contravention and disregard of the said court order of 9.11.2015, the plaintiff/respondent has further invaded the proceeded to fence her portion of land with off-cuts. She believes that the Advocates for the plaintiff/respondent advised him accordingly on the said consent order he has defied.

That she was present in court on 9.11.2015 when the Honourable Court took time to explain and warn the defendant before recording the consent by parties. That she is further informed by her Advocate on record that the plaintiff's/respondent's actions are grossly contemptuous to the authority of the law vested in this Honourable court and therefore, it is just and proper that the plaintiff/respondent be punished for contempt of court as prayed. She believes that the plaintiff has greatly disregarded this court and the authority bestowed upon it by the law and therefore she stands to suffer grave loss and prejudice in the event this application is not allowed as she is unable to utilize the suit land this season. That no prejudice shall be occasioned upon the plaintiff/respondent in the even this application is allowed as he has been warned in vain.

Mr. Okara learned counsel for the applicant submits that the respondent has openly disobeyed court orders and should be punished accordingly.

Mr. Komen leaned counsel for the respondent submits that the respondent does not understand between possession and ownership and therefore he is reluctant to surrender the portion ordered by the court to the defendant.

This court has given the respondent several opportunities to obey the court orders issued in this matter but he has refused to oblige. When requested by the court to speak and explain to court why he cannot respect the court order, the plaintiff/respondent states that his rights are protected by the Civil Procedure Rules and that nobody can take his land away.

The facts of this case are simple on the 10.7.2013, the court made an order that the *status quo* prevailing prior to filing of the suit herein be maintained meaning the plaintiff to continue utilizing the 5 acres he occupies and the defendant to continue utilizing the 4 acres she occupies. The order was made by consent of the parties and therefore, the issue of service does not arise. The said order was issued by the court on 12.7.2013.

On the 11.3.2015, the parties again recorded a consent in the following terms:

- (a) The plaintiff/respondent be allowed to occupy and utilize five acres of the suit parcel of land.
- (b) The defendant to occupy and utilize 4 acres of the same as per the consent order dated 10.7.2013.
- (c) Plaintiff/respondent to remove the fence and give access to the defendant/applicant so as to facilitate compliance with Order No. 1.
- (d) The plaintiff/respondent is hereby granted leave to file a supplementary list of document and witnesses together with witness statements if any within 21 days. The defendant to have corresponding leave within 10 days of service. The costs of the application dated 26.1.2015 be in the cause. There be

liberty to apply. Hearing on 2.6.2015.

The respondent has never obeyed the terms of the two aforesaid consent and has been planting, harvesting maize in the portion of land that was preserved for the applicant by the court.

On the 24.11.2015, this court ordered by consent of the parties that the plaintiff do surrender 30 bags of maize of 90 kg each to the defendant in compromise of the contempt application. This has never been obeyed to date.

The three aforesaid consents have never been obeyed by the respondent. The respondent has not filed a replying affidavit in this application hence all allegations by the applicant are not controverted. He states that he will never give the defendant the said portion of land as the same is his ancestral land and that he is protected by the Civil Procedure Rules, 2010.

I do find that the plaintiff has been ploughing, planting and harvesting from the entire parcel of land in disobedience of the various court orders issued by consent of the parties herein. He has failed to surrender 30 bags of maize of 90 Kilogrammes to the defendant despite the court orders.

The acts of the plaintiff/respondent are meant to demean and defy the authority of this court. The plaintiff is the one who came to court and therefore cannot expect the court to hear him when he disobeys orders of the same court that he seeks justice. Court orders should be taken seriously by all parties to the suit.

This court reiterates that court orders ought to be obeyed as they are not for cosmetic purposes. No individual however influential in society, however rich, however learned or popular is above the law. Court orders have to be obeyed by all and sundry. *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 Popatial 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.”

Having found the plaintiff to be in contempt of court, I do order that he be imprisoned for a period of one month. In the alternative, the plaintiff to pay a fine of Kshs.60,000/= and to give the defendant 30 bags of maize or an equivalent sum of Money. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 7TH DAY OF JUNE, 2016.

ANTONY OMBWAYO

JUDGE