



**REPUBLIC OF KENYA**

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

**ENVIRONMENT & LAND CASE NO. 227 OF 2014**

**JEDROM BUILDING AND CIVIL ENGINEERING LIMITED.....PLAINTIFF**

**VERSUS**

**THE COUNTY GOVERNMENT OF UASIN GISHU.....1ST RESPONDENT**

**JOEL LAGAT.....2ND RESPONDENT**

**RULING**

*Jedrom Building and Civil Engineering Limited* hereinafter referred to as the applicant has filed an application requiring that the 2nd Respondent namely *Joel Lagat* do show cause why he should not be committed to civil jail and the 1st respondent property be attached and sold and the applicant be awarded compensation therefrom for damages incurred after the breach and contempt of court. That the respondent be punished in any appropriate way that the court shall deem fit for contempt of Court and that the respondent to be compelled to stop interfering with the Plaintiff's Parcel of Land Number Eldoret Municipality Block 10/2052.

The application is base on grounds that on 30th June, 2014 the Honourable Court issued an order restraining the defendant, its servants and or agents from trespassing and interfering with the Plaintiff's occupation and use of parcel of land registration number Eldoret Municipality/Block 10/2052. The order was dully served on the 1st respondent's legal advisor by the name S.K. Metto who is duly authorized to receive and accept summons and any other court documents on behalf of the defendant/1st respondent. The 1st respondent has totally ignored and or disregarded the order and on 20th August, 2014 proceeded to commit further destruction on the Plaintiff's/Applicant's property through it's servant/employee JOEL LAGAT it's county enforcement officer. The said JOEL LAGAT is the Deputy County enforcement officer and was served with the order at the location of the destruction but ignored the same and remarked that the order is a mere paper collected from Court.

That as a consequence of disobedience, the applicant has greatly suffered in terms of financial and emotional loss. The respondents act and or their servants and or agent conduct is fragrant belittling to the court and tends to undermine the authority and dignity of the Court and therefore should not be condoned.

The application is supported by the affidavit of William Kipkorir Kipkurui who states that the Plaintiff/applicant is the registered owner of parcel of land number Eldoret Municipality/Block 10/2052. On 27th June, the Defendant/1st Respondent in total disregard of the Plaintiff/applicant proprietary rights proceeded to invade and trespass on the Plaintiff's parcel of land and destroyed a permanent fence. The Plaintiff/applicant went to court and obtained a temporary injunction restraining the defendant from further interfering with its property. The order was served on the legal advisor of the 1st respondent who was the proper and authorized person to receive court process 30th June, 2014 and an affidavit of service to that effect filed on 16th July, 2014 (see copy of order and affidavit of service annexed hereto and

marked WKK1 (a) and (b). The defendant did not even attempt to file any reply or defence to the suit herein and application dated 30th June, 2014 showing any justification for their action.

Instead, on 20th August, 2014, the defendant/1st respondent in flagrant breach of the orders through its employee the 2nd respondent invaded and trespassed on the plaintiff's parcel of land number Eldoret Municipality/Block 10/2052 and proceeded to commit further destruction assessed at Kshs.4 Million.

He gave a copy of the order to the enforcement officer undertaking the destruction on behalf of the 1st respondent by the name JOEL LAGAT the 2nd Respondent herein but instead of stopping went ahead with the destruction while belittling the court order claiming it is a piece of paper collected from court.

He, the Plaintiff/applicant is apprehensive that if not stopped or further action taken for contempt, the respondent may continue to infringe on the applicant's proprietary rights and commit further contempt of court.

The Court should also preserve its dignity by punishing the respondents who have undermined its authority.

It is therefore his prayer that the 1st Respondent shows cause why its property should not be attached and sold in order to compensate the applicant for damages incurred as a result of breach of the order and contempt of court and 2nd respondent likewise shows cause why he should not be committed to civil jail.

The 2nd Respondent Joel Lagat filed a replying affidavit stating that he was never served with any order originating from this Court on the alleged date or any other date. He states that he is not the Deputy County Enforcement Officer as alleged but a mere County Askari. He claims that he never took part in the alleged distribution.

The applicant submits that the orders of the court were served on the County Government on the 2/7/2014 through the Legal Officer. On the 16/7/2014, the County Government of Uasin Gishu entered appearance through Arap Mitei and Company Advocates.

The application was set for hearing on 1/10/2014 in the presence of Counsel for the Respondent and the interim orders extended till then. Despite knowledge of the court order the respondent destroyed the plaintiff's property. The 2nd Respondent was shown the order but went ahead to destroy the property. The destruction undermines the authority of the court. The applicant prays for restitution as he has suffered immensely.

The respondents submit that they respect the authority of the court and did not participate in the alleged destruction. The 2nd Respondent avers that he never took part as he is not the Deputy Enforcement Officer.

I have considered the evidence of the Plaintiff/applicant and the evidence of the Defendant/Respondent and do find that on 1/7/2014 Court issued a temporary order of injunction against the Defendant, its servant and or agents from trespassing and interfering with the Plaintiff's occupation and use of parcel of land registration Number ELD/Municipality/Block 10/2052 pending the hearing and determination of the application inter-parte. The order was served upon S. K. Metto on the 2/7/2014 who is the Legal Advisor of the County Government of Uasin Gishu. He instructed the firm of Arap Mitei to appear on behalf of the County Government which instruction Mr. Arap Mitei did comply with and attended court on 16/7/2014. Unfortunately, the building in contention was destroyed thereafter despite the extension of court order in the presence of counsel for the Respondent. The 2nd Defendant vehemently denies having participated in the destruction. The 1st Defendant denies knowledge of the destruction. The building was destroyed on the 20/8/2014. There is no dispute that the 1st respondent was served through its legal advisor, however there is doubt as to whether the 2nd Respondent was aware of the court order. Contempt proceedings are quasi-criminal in nature and therefore requires individual responsibility. I do find that the 2nd Respondent cannot be held guilty in contempt of court as the applicant has not demonstrated that he was aware of the court order. Moreover, it is not proved on the standard required

that the 2nd Defendant participated in the demolition of the building.

However, it is demonstrated beyond balance of probability that the Defendant was served with the court order through its legal advisor and further instructed and advocate to appear on its behalf and that the interim orders were extended in the presence of the counsel. I am not in doubt that the building was destroyed by the Defendant as there is no other person who was claiming that the building was situated on Public Land other than the Defendant. I do conclude that the building was destroyed by the Defendant despite court orders.

Court orders are not made in vain, they should be obeyed in *Kyoga Hauliers Limited v Long Distance Truck Drivers & Allied Workers Union* [2015] eKLR the Court of Appeal held as follows:-

“The power to deal with contempt of court is provided for under Section 5(1) of the Judicature Act, Section 63(c) of the Civil Procedure Act and Order 40 Rule 31 of the Civil Procedure Rules. Of importance in the determination of this issue is however Section 5(1) of the Judicature Act, since Section 63(c) of the Civil Procedure Act and Order 40 Rule 31 of the Civil Procedure Rules are concerned with disobedience of an order of temporary injunction and resultant consequences which are punishment in the form of imprisonment or attachment and sale of the contemnor’s property.” [Emphasis added]

Similarly, in *Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others* [2014] eKLR, the Court of Appeal held:

“..... the only statutory basis of contempt of court law in so far as the Court of Appeal and the High Court are concerned is Section 5 of the Judicature Act. In addition, Section 63 (c) of the Civil Procedure Act provides that a disobedience of an order of temporary injunction will attract punishment in the form of imprisonment or attachment and sale of the contemnor’s property.”

The court should not hesitate to punish any person who challenges its authority. As stated by Romer, L.J. In *Hadkinson –vs- Hadkinson*, (1952) ALL ER 567,

*“It is the plain and unqualified obligation of every person against, or in respect of, whom 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. Lord Cottenham, L.C., said in Chuck –vs- Cremer (1) (1 Coop. temp.Cott 342):*

*“A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid- whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it exists it must not be disobeyed.”*

Further, this Court in *Refrigeration and Kitchen Utensils Ltd. –vs- Gulabchand Poptlal Shah & Another*, - Civil Application No.39 of 1990 held,

*“ ... It is essential for the maintenance of the rule of law and good order that the authority and dignity of our courts is upheld at all times.”*

Section 29 of the Environment and Land Court act provides that 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. The 1st Defendant cannot be jailed as it is a state organ and not an individual that can serve jail. The legal advisor cannot be sent to jail as he did not carry out the

destruction but having been served failed or neglected to advise the defendant. Therefore, I do find that the **County Government Of Uasin Gishu** was aware of the court order but proceeded to send its officers to demolish the building despite the court orders and therefore committed an offence. Though the defendant can be punished with an order of restitution of the plaintiff's property the said order would not be appropriate as the Plaintiff has amended the plaint to include the value of the destroyed property and therefore an order restitution would be determine the main issue in the plaint. Be that as it may, this court finds that the Defendant cannot escape unpunished for the act of contempt of court and therefore I do order that the defendant pays a fine of Kshs.500,000/= forthwith, failure of which its property to the value of the said amount to be attached and sold.

DATED AND DELIVERED AT ELDORET THIS 19TH DAY OF AUGUST, 2016.

ANTONY OMBWAYO

JUDGE