



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC CASE NO. 914 OF 2017**

**HUSSEIN MOHAMMED HAJI.....PLAINTIFF**

**VERSUS**

**G. N. KARIUKI.....1<sup>ST</sup> DEFENDANT**

**THE LAND REGISTRAR, KAJIADO NORTH.....2<sup>ND</sup> DEFENDANT**

**RULING**

What is before Court for determination is the Plaintiff's application dated the 4<sup>th</sup> March, 2019 brought pursuant to Order 51 Rule 1 of the Civil Procedure Act and Sections 4(1) (a), 5, 28, 29 of the Contempt of Court Act. The Applicant seeks the 1<sup>st</sup> Respondent to be cited for contempt of the Court Order issued on 16<sup>th</sup> January, 2018 and committed to Civil Jail for six (6) months. Further, that the status quo be managed by the OCS Isinya Police Station and Respondent to bear the costs of the application.

The application is premised on the summarized grounds that the Court directed the parties to maintain the status quo on the 16<sup>th</sup> March, 2018 and set the suit down for hearing. The 1<sup>st</sup> Defendant in gross violation of the Court direction has entered the suit property and damaged the resources therein. The 1<sup>st</sup> Respondent has virtually failed to comply with the Court Order and should hence be cited for contempt.

The application is supported with the affidavit of the Plaintiff HUSSEIN MOHAMED HAJI where he reiterates his claim above and avers that the 1<sup>st</sup> Respondent is acting maliciously to damage and waste the suit property knowing that he procured the said property fraudulently hence looking to benefit albeit unlawfully before the determination of this suit. He contends that the continued damage caused by the 1<sup>st</sup> Respondent on the suit property will negate the very reason for fair determination of the suit. He sought for the Court to cite the 1<sup>st</sup> Respondent for contempt so as to preserve the dignity of the Court and Rule of Law.

The application is opposed by the 1<sup>st</sup> Respondent GEORGE NGURE KARIUKI who filed a replying affidavit where he deposes that he consented to maintaining the Status Quo on the suit property pending the hearing and determination of the suit. He explains that the Status Quo obtaining as at 16<sup>th</sup> January, 2018 when the Order was made was that he was in possession of the property and utilizing the same for farming purposes. He contends that he remains in possession and utilization of the property to date and had not transferred, leased or altered its ownership nor added any structures or demolished any that had existed at the time the Order was issued. He confirms that the cutting of the grass on the suit property is towards his farming activities which was obtaining at the time the Status Quo was issued. He avers that the persistent applications for committal by the Plaintiff are intended to harass him and mislead the Court. He insists to date the Plaintiff has not taken any steps to prosecute the suit. He reiterates that no damage has been caused to the suit property and the harvesting of hay that had been planted thereon cannot be deemed damage. Further, that he is a law abiding citizen well aware of the Court's power and have not contravened its Orders.

The Applicant and filed 1<sup>st</sup> Respondent filed their respective submissions.

**Analysis and Determination**

Upon consideration of the Notice of Motion application dated the 4<sup>th</sup> March, 2019 including the parties affidavits and submissions, the only issue for determination is whether the 1<sup>st</sup> Respondent should be cited for contempt and committed to civil jail for six months.

The Applicant in his submissions contended that on 28<sup>th</sup> and 29<sup>th</sup> February, 2019 the 1<sup>st</sup> Respondent entered the suit property and commenced cutting grass for commercial purposes. Further, that the Court Order dated 16<sup>th</sup> January, 2018 was clear, unambiguous and the 1<sup>st</sup> Respondent had full knowledge of its terms but breached it. He relied on the cases of **Econet Wireless Ltd V Minister of Information & Communication of Kenya & Another (2005) eKLR** and **Katsuri Limited V Kapurchand Depar Shah (2016) eKLR** to buttress his arguments. The 1<sup>st</sup> Respondent in his submission contended that a great consideration in the maintenance of status quo was to fast track the

hearing of this suit. He insists the cutting of grass cannot be deemed as contempt. He has relied on the **Baobab Beach Resort Case** to urge the Court to dismiss the instant application.

Black's Law Dictionary (Ninth Edition) defines contempt of court as:- ***“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”***

***In the case of In Johnson Vs Grant (1923) SC 789 at 790 Clyde L J noted:- “The phrase ‘contempt of court’ does not in the least describe the true nature of the class of offence with which we are here concerned.... The offence consists in interfering with the administration of the law; in impeding and perverting the course of justice..... it is not the dignity of court which is offended – a petty and misleading view of the issues involved, it is the fundamental supremacy of the law which is challenged.”***

Further, section 29 of the Environment and Land Court Act which stipulates 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***

In the case of **North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjohi (2016) eKLR** where Justice Mativo stated that: ***‘ writing on proving the elements of civil contempt, learned authors of the book Contempt in Modern New Zealand have authoritatively stated as follows:-***

***‘ there are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases - (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant; (b) the defendant had knowledge of or proper notice of the terms of the order; (c) the defendant has acted in breach of the terms of the order; and (d) the defendant's conduct was deliberate.’***

In the instant case, I note it is the 1<sup>st</sup> Respondent's advocate who had proposed to maintain status quo and for parties to proceed to hear the main case. 1<sup>st</sup> Respondent insists he was harvesting hay and not interfered with the suit land. In the instant application except for the pictures annexed to the affidavit showing presence of the tractor on the suit land, it is not clear on what other interference is thereon. From the Court records, it is the 1<sup>st</sup> Defendant who was the registered proprietor of the suit land. In the application dated the 2<sup>nd</sup> October, 2017 which was filed contemporaneously with the Complaint, the Plaintiff in his prayer (2) had sought to restrain the 1<sup>st</sup> Defendant from transferring, developing, disposing off or alienating the suit land. I note in the instant application, the Applicant has not indicated whether the 1<sup>st</sup> Respondent has done any of the above acts to interfere with the prevailing status quo . The Applicant however contended that the 1<sup>st</sup> Respondent should be committed to civil jail for failing to obey the Court Order on maintenance of status quo.

Based on my analysis above, I find that the 1<sup>st</sup> Respondent's conduct of harvesting hay cannot be deemed to be in contempt of a Status Quo order.. I further opine that committing the 1<sup>st</sup> Respondent to Civil Jail would violate the provisions of Article 24 of the Constitution

Based on the facts before me and in associating myself with the decisions cited above, I find that the Applicant has failed to meet the threshold set to cite the 1<sup>st</sup> Respondent for contempt.

In the circumstance, I find the application dated 4<sup>th</sup> March, 2019 is not merited and will disallow it.

Costs will be in the cause.

Suit to be set down for hearing

**Dated, Signed and Delivered in Kajiado this 26<sup>th</sup> November, 2019.**

**CHRISTINE OCHIENG**

**JUDGE**