



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

PETITION NO 50 OF 2012

AFRICAN CENTRE FOR RIGHTS AND

GOVERNANCE (ACRAG).....1ST PETITIONER

JOHN MUCHINA2ND PETITIONER

JOHN MUCHIRI.....3RD PETITIONER

ELIZABETH WANJIKU4TH PETITIONER

VERSUS

NAIVASHA MUNICIPAL COUNCIL.....RESPONDENT

RULING

(Application for contempt; respondents given 30 days to show cause why they should not be held in contempt).

1. The application before me is that dated 23 October 2017 filed by the Petitioners herein. It is an application brought pursuant to the provisions of Section 4(1) (a), 5(a), 28 (6), and 30(2) of the Contempt of Court Act, Act No. 46 of 2016, and all other enabling provisions of the law. The application seeks the following principal orders which are prayers 2, 3, 4 and 5, of this application namely :-

(i) That this Honourable Court be pleased to issue a notice of not less than 30 days to the Governor of Nakuru County, the County Executive Officer in Charge of Environment, Natural Resources, Energy and Water and the Chief Officer in Charge of Environment, Natural Resources, Energy and Water to show cause why contempt of court proceedings should not be commenced against them.

(ii) That this Honourable Court be pleased to find the Governor of Nakuru County, the County Executive Officer in Charge of Environment, Natural Resources, Energy and Water, and the Chief Officer in charge of Environment, Natural Resources, Energy and Water, guilty of contempt of court.

(iii) That upon grant of (the prayer above), this Honourable Cort be pleased to order that the Governor of Nakuru County, the County Executive Officer in Charge of Environment, Natural

Resources, Energy and Water, and the Chief Officer in Charge of Environment, Natural Resources, Energy and Water, pay a fine of Kshs. 200,000/= each and be committed to civil jail for six months or such period as this Honourable Court may deem fit and just.

(iv) That this Honourable Court be pleased to order that the Governor of Nakuru County, the County Executive Officer in Charge of Environment, Natural Resources, Energy and Water, and the Chief Officer in Charge of Environment, Natural Resources, Energy and Water, be barred and/or denied audience in this suit unless and until they have purged the contempt.

2. By way of background, this suit was commenced by the applicants through a constitutional petition filed on 1 November 2012. The gist of the case of the petitioners was that the Naivasha Municipal Council, then in operation, and whose functions have now been taken over by the County Government of Nakuru, had illegally converted a land parcel Naivasha/Maraigushu Block 11/4 (Kurai), into a dumping site and this action had gone to infringe on the constitutional right of the petitioners to a clean and healthy environment. I heard the petition and delivered judgment on 31 May 2017. I did hold for the petitioners and did find that the respondent had illegally converted the parcel of land in question into a dumping site contrary to the provisions of the Environmental Management and Coordination Act (EMCA). I further held that the continued dumping of waste in the said land violated the rights of the applicants to a safe and healthy environment. I considered whether or not to order an immediate closure of the dumpsite, which I could very well have done, given that it is illegal, but I did give the respondent 14 days to comply with the provisions of EMCA, which relate to licencing of dumpsites, and specifically apply for a licence as required by the law. I did direct the National Environmental Management Authority (NEMA) to independently assess such application for a licence when and if it was made. I further directed that if no application to operate the dumpsite was made, then the respondent was to stop any further dumping of waste on the site and restore the site within 90 days of the judgment.

3. In this application, the applicants have averred that despite the judgment of the court, the respondent has not applied for any licence as directed and has refused to comply with the orders of the court. It is for that reason that they seek the orders sought in this application.

4. Despite being served, the respondent did not file anything to oppose the motion. On 16 November 2017, when the application came up for inter partes, hearing, the respondent applied for adjournment but I was not convinced as to the reasons and I declined the same. I ordered the application to proceed, and Mr. Magatta for the applicants, made brief submissions. I then reserved ruling for 25 January 2018.

5. On 20 November 2017, the respondent, filed an application of even date, seeking orders to set aside the proceedings of 16 November 2017 and allow the respondent to file a replying affidavit to the subject application. On 23 November 2017, I directed that the application by the respondent, be heard inter partes on 15 January 2018. On 15 January 2018, the respondent did not turn up to prosecute its application and its counsel was also absent. I had no option but to dismiss its application.

6. It is the duty of every person to obey and comply with an order issued by a court of law. This is a country governed by the rule of law and we stand the risk of degenerating into a state of anarchy, where every person does whatever he wishes with impunity, if we do not put our foot down and ensure compliance with court orders. Court orders must be obeyed to maintain the continued state of law of this country. I have not been shown any evidence of compliance with the judgment of 31 May 2017 and it is not disputed that the respondent is still dumping waste despite the judgment of this court. That to me constitutes an utmost act of impunity which must be checked by this court.

7. I therefore do not hesitate to grant prayer 2 of this application and issue a notice of 30 days requiring

the Governor of Nakuru County, the County Executive Officer in Charge of Environment, Natural Resources, Energy and Water, and the Chief Officer in Charge of Environment, Natural Resources, Energy and Water to show cause why contempt of court proceedings should not be commenced against them. I direct the petitioners to extract this order and have it served upon the said officers and I will give a date in court at the delivery of this ruling, when the said officers should attend court to show cause.

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 24th day of January 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr Magata for the applicants.

No appearance on the part of M/s S.O Madialo & Co. for the respondents.

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU



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