



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAKURU

CIVIL CASE NO. 580 OF 1990

GILBERT CHEGE NJOROGE.....PLAINTIFF/RESPONDENT

-VERSUS-

CHARLES KAMAU.....1ST DEFENDANT/APPLICANT

JOSEPH MUCHIRI MUNGAI.....2ND DEFENDANT/APPLICANT

RULING

1. Judgment in this suit was delivered on the 4th May 2012 in favour of the plaintiff/Respondent in the present application.

No appeal was filed.

Upon application, and by a court order dated the 12th May 2017 (Mulwa J) the court directed the manner of execution of the decree that the District Land Surveyor Nyandarua to move into the suit land to re-establish the original beacons for the suit (land – about 35 acres) – to give effect to the decree.

2. This order has not been set aside varied or stayed by a subsequent court order.

3. On the 15th May 2018 the Defendants moved the court under **Section 4 and 5 of the Contempt of Court Act, 2016** for orders that the plaintiff be summoned to appear in court to show cause why he should not be punished for disobedience of a court injunction.

4. The injunction orders referred to by the applicants as stated in the affidavit in support of the application is dated 8th November 2017(M. Odero J) pursuant to an application dated 6th November 2017. The order restrained the plaintiff from interfering in any manner with the suit property pending interpartes hearing.

A perusal of the court's file proceedings confirms that the application has not been fixed for interpartes hearing since the 8th November 2017.

5. An interim order of injunction cannot subsist forever, if not extended by the court or upon interpartes hearing where it is confirmed.

Order 40 Rule 4(2) states

“An ex parte injunction may be granted only once for not more than fourteen days and shall not be extended thereafter except once by consent of parties or by the order of the court for a period not exceeding fourteen days.

4(4) -All applications under this order shall be heard expeditiously and in any event within 60 days from the date of filing unless the court for good reason extends the time.

6. Further **Rule 6** thereof makes it mandatory that when an interlocutory injunction has been granted and the suit is not determined within a period of **twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the court orders otherwise.**

Those are the legal principles governing interlocutory orders of injunction.

7. Having confirmed that the application giving rise to the interim injunctive orders dated the 8th November 2017 is still pending for hearing and there being no demonstration that the orders have ever been extended by the court, it follows that the said orders dated 8th November have lapsed and therefore have no force of law and therefore cannot be enforced. They are of no legal consequences – **ELC Case No.267 of 2015**.

8. The Contempt application stated to be as a result of disobedience by the Respondent/plaintiff of the order dated 8th November 2017 which I have rendered has lapsed and of no legal consequence leaves the plaintiff at liberty to execute the decree by taking the specific actions directed by the court by its orders dated 12th May 2017.

Those orders are intact and enforceable.

9. For the above reasons I find the preliminary objection merited. I further find that no sufficient reasons have been tendered to persuade the court to summon the plaintiff to answer to contempt allegations.

The application dated 15th May 2018 is therefore dismissed with costs to the Respondent/plaintiff.

Dated signed and delivered this 24th Day of January 2019.

J.N. MULWA

JUDGE