



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

SUCCESSION CAUSE NO.286 OF 2013

IN THE MATTER OF THE ESTATE OF

MURIUKI JOSHUA alias MUGO KAMAKU.....DECEASED

MARY WANJIRU MURIUKI.....APPLICANT

VERSUS

LABAN ELIUD GICHOBI.....1ST RESPONDENT

CHARLES KARANJA MURIUKI.....2ND RESPONDENT

RULING

1. The Petitioner/Applicant filed an application dated 7.3.2018 for orders that the honourable court be pleased to cite the Respondents for contempt of court orders given on 9.11.2017 and they be committed to civil jail or their properties be attached.

2. On 9.11.2017, this court issued temporary injunction against the Respondents, their family members from trespassing or interfering with the Applicant's use and occupation of L.R. NO.NGARIAMA/NGIRIAMBU/482 pending hearing and determination of the application. The application was to be heard interparties on 16.11.2017. On the said date the court was not sitting and hearing date was to be taken in the registry. ON 20.3.2018, by consent advocates for the Respondents were given 14 days to file a response. Later, the advocate for the Respondent withdrew and the Respondents chose to proceed in person.

APPLICANT'S CASE

3. She confirms to have served the Respondents with the court order and has filed affidavit of service. She states that the Respondent entered the suit land and started cultivating, putting wooden structures and burning macadamia trees.

4. 1ST RESPONDENT'S CASE

In response, they stated that they have always lived on the suit land, the land was sub divided and they lived on the land for a long time. That they were served with the court order but they were already on the land and that they came to court to enquire because that is where they call home.

2ND RESPONDENT'S CASE

5. He stated that their deceased mother was buried on the land and that the order was served after their house was demolished when they went to look for employment. That they have planted 80 coffee bushes and other trees and the order was oppressive.

ISSUES ARISING; CONTEMPT PROCEEDINGS

6. Refer to *Shimmers Plaza Limited V. National Bank of Kenya Limited [2015] eKLR*. The Court of Appeal held the following on contempt proceedings;

“We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to

obey a court order or not.....

The court should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and centre. This would amount to amount to abdication of our sacrosanct duty bestowed on us by the Constitution. The dignity, and authority of the Court must be protected, and that is why those who flagrantly disobey them must be punished, lest they lead us all to a state of anarchy”.

Refer to ***Katsuri Limited V. Kapurchand Depar Shah [2016] eKLR***. The court held;

“In Peter K. Yego & Others Vs. Pauline Nekesa Kode the court recognizing that contempt of court is criminal, held that it must be proved that one has actually disobeyed the court order before one is cited for contempt. The applicant in an application for contempt must prove beyond peradventure that the Respondent is guilty of contempt...”

Although the proceedings are civil in nature, it is well established that an applicant must prove the elements beyond reasonable doubt, at least higher than the standard in civil cases, the fact that the liberty of the defendant could be affected means that the standard of prove is higher than the standard in civil cases. It is incumbent on the applicant to prove that the defendant’s conduct was deliberate in the sense that he or she deliberately or willfully acted in a manner that breached the order.

7. The prayer sought is for committal for contempt. The power to commit for contempt is one to be exercised with great care. An order committing a person to prison for contempt is to be adopted only as a last resort.

The applicant has proved her case that the Respondents were in contempt of court orders since the 2nd Respondent has confirmed that they were not living on the suit land since they had gone to look for employment and the house was demolished. They claim that they planted coffee bushes and trees but have not proved this is on a balance of probabilities.

8. As per the photos annexed to the applicant’s application, the house is undergoing construction meaning that the Respondents proceeded to construct despite the court order. In addition she has annexed photos of her destroyed crops. She has therefore proven her claim.

The applicant is entitled to the orders. I order that;

- a) The application is allowed.
- b) The Respondents shall be punished for contempt
- c) The Respondents are fined Kshs.20,000/= each for contempt of court orders in default each to serve 30 days imprisonment.
- d) The Respondents to purge the contempt by complying with the court order.
- e) Costs to the applicant.

DATED AT KERUGOYA THIS 20TH DAY OF DECEMBER, 2019.

L. W. GITARI

JUDGE