



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

ELC NO. 287 OF 2013

CECILIA GACHONGA MUKUNJA.....1ST PLAINTIFF/APPLICANT

JACOB MWENDA MUKUNJA.....2ND PLAINTIFF/APPLICANT

ZAVERIO KINOTI MUKUNJA.....3RD PLAINTIFF/APPLICANT

VERSUS

PASKASIO MUKUNJA NKONGA.....DEFENDANT/RESPONDENT

RULING

1. This ruling is in respect of the application dated 29th September, 2015 brought under Order 40 r 3 Cap 21 and section 5 of the Judicature Act Cap 8 of laws of Kenya.

2. The Applicants prays for orders that the Respondent be punished by way of being committed to civil jail for a period not exceeding 6 months for being in contempt of the court orders of 8th November, 2013. Applicant also prays that the court may give such other orders which may meet the ends of justice.

3. In support of the motion, Applicant states that she is a wife of the Respondent. She avers that on 29th October, 2013 the court gave mandatory injunction against the Respondent as the latter had chased the plaintiffs away from the family land.

She was thereafter able to go back home where she lived peacefully until January, 2014 when she was viciously chased away from the house. The Respondent was apparently served with the court orders but he blatantly failed to obey the same. Applicant avers that courts orders are not issued in vain.

4. Under Section 5 of the Judicature Act;

“The high court and the court of Appeal shall have the same powers to punish for contempt of court as is for the time being possessed by the high court of justice in England and such power shall extend to upholding the authority and dignity of subordinate courts.

An order of high court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the high court..”

5. The consequences of breach are provided for under order 40 (3) of Civil Procedure Rules.

“In cases of disobedience, the court granting an injunction may order the person to be

detained in prison for a term not exceeding six months unless in the meantime the court directs his release.”

6. The court’s records indicate that the Respondent is aware of the matter. He has a counsel and he has even filed a statement of defence. The Respondent’s counsel was present in court on 16th September, 2015 and 24th May, 2016. But to date no response or explanation has been advanced with regard to the orders issued on 29th October, 2013.

7. Despite the absence of the Respondent, this court has to consider whether the application is merited or not. Three and a half years have passed from the time the orders were granted.

Under order 40 rule 6 (civil procedure rules),

“Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of 12 months from the date of the grant, the injunction shall lapse unless for any sufficient reason the court orders otherwise.”

8. I hold the view that order 40 (6) acts like a safeguard, ensuring that orders given at the interlocutory stage do not remain in force indefinitely.

In Edward Njoroge Mwangi vs. Francis Muriuki Muraguri & two others, ELC NO. 431 Nyeri , Waithaka J while dealing with a case of interlocutory injunction quoted **Regina Pacis University College through Board of Trustees & Another v. William Charles Fryda (2012) e KLR Omondi J.**, in an application for orders that had subsisted for more than 12 Months it was observed:-

“Certainly once the order lapsed – it died as it were and cannot be extended. The only way to bring it to life would be by seeking to reinstate it. See also ELC NO. 1321 OF 2013 Nairobi MARIA LWANDE & OTHERS VERSUS REGISTERED TRUSTEES OF TELEPOSTA PENSION SCHEME DEFENDANT (Gacheru J)

9. Article 159 2(b) of the constitution stipulates how judicial authority is to be exercised.

“Justice shall not be delayed.”

Allowing the application at this stage will only have the net effect of prolonging the case further. I am also guided by the overriding objective of the civil procedure Act under Section 1A.& 1B In furthering this overriding objective, the court is obligated to handle matters presented before it with the aim of having

- **“just determination of proceedings**
- **efficient disposal of the business of the court**
- **efficient use of the available judicial and administrative resources**
- **timely disposal of proceedings, and all other proceedings in to court.”**

10. This is a case where parties have filed their pleadings. The court is in a better position to carry out its mandate under article 159 and under Section 1A and 1B of the Civil Procedure Act If the matter goes to full trial than if it was to allow the application for contempt.

11. The upshot of my findings is that the application has been overtaken by event. The event being that the injunctive orders lapsed a year from the time they were given. However, in order to have the suit land preserved, the order of inhibition is remain in force until the suit is heard and determined.

12. The application of 29:09: 15 is hereby dismissed with no orders as to cost.

DELIVERED, DATED AND SIGNED AT MERU THIS 31ST DAY MAY, 2017

IN THE PRESENCE OF:-

CA:Janet

Mr. Kariuki for E. Mwangi for Applicant

Plaintiff present

Defendant present

L. MBUGUA

JUDGE