



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL MISC. APPL. NO. 636 OF 2016**

**TIMOTHY JOHN NICKLIN .....1<sup>ST</sup> PLAINTIFF/APPLICANT**

**ANNE CHRISTINE NICKLIN..... 2<sup>ND</sup> PLAINTIFF/APPLICANT**

**VERSUS**

**CHAIRMAN RUNDA WATER LIMITED.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**CHAIRMAN RUNDA ASSOCIATION.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

1. The application dated 19<sup>th</sup> December, 2016 is made under Section 5 of the Judicature Act and Section 3A of the Civil Procedure Act. The application seeks orders that the Honourable court be pleased to grant leave to the Applicants to institute contempt of court proceedings against the Chairman, Runda Water Ltd and the Chairman, Runda Association (Contemnors) for disobedience of the injunctive court orders issued in Milimani CMCC No. 3062 of 2014.

2. The Application is predicated on the grounds stated in the application and is supported by the affidavit sworn by Timothy John Nicklin. It is stated that on 30<sup>th</sup> June, 2016 the lower court delivered a judgment and issued a permanent injunction restraining the Defendants from blocking or barricading the Plaintiffs' access to that property known as L.R. No. 7785/35, and issued a mandatory injunction compelling the Defendants to remove the barriers erected on the public road known as Ruaka Road within Runda Estate. The Applicants' complaint is that the Respondents though aware of the said judgement of the court disobeyed the same, hence the instant application.

3. The application is opposed. It is stated in the replying affidavit that the application is misconceived, bad in law and ought to be struck out. It is further stated that the Applicants had filed an application before the lower court for the review of the judgment the subject matter of the appeal herein. That the application for review is still pending and no order or decree has been extracted.

4. The Applicants filed a supplementary affidavit stating that the application for review was filed for purposes of correcting an error apparent on the court record. It is further stated that although the decree or orders have not yet been extracted, the Respondents are aware of the judgment and no orders of stay have been obtained.

5. The Respondents have also raised a preliminary objection to the application on the following grounds:

**“1. This court lacks jurisdiction to hear the application**

**2. The application for leave is in respect of a judgment issued by the magistrates court in Milimani CMCC No. 3062 of 2014, which court has jurisdiction to punish for any alleged contempt of its own orders.”**

6. Both the application and the preliminary objection were argued contemporaneously. The parties filed their written submissions which were highlighted before me. I have considered the said submissions and the authorities relied on by the parties.

7. I will first deal with the preliminary objections raised. As stated by the Court of Appeal in the case of **Owners of the Motor Vessel “Lilian S” v Caltex Oil (Kenya) Limited [1989] KLR 1:**

**“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”**

8. It is clear from the replying affidavit that a permanent injunction was issued restraining the Respondents from blocking or barricading of the road. A mandatory injunction was also issued compelling the Respondents to remove the barriers.

9. Order 40 of the Civil Procedure Rules 2010 deals with issuance of temporary and interlocutory restraining orders of injunction. It is against the background of the said provision that the Court of Appeal made the decision in **Ramadhan Salim v Evans M Maabi T/a Murhy Auctioneers & another [2016] eKLR** which has been referred to by both parties herein. The Court of Appeal stated as follows:

**“.....the order contravened was in the nature of temporary injunction which the magistrate’s court had jurisdiction to punish as opposed to mandatory injunction which the magistrate’s court lacked jurisdiction to punish for contempt.”**

10. In the case of **Ramadhan (supra)** the ruling was delivered on the 9<sup>th</sup> April, 2015 and the application filed on 25<sup>th</sup> May, 2015. In the case at hand, the judgment of the lower court wherein the mandatory orders of injunction were issued was delivered on 30<sup>th</sup> June, 2016. By the said date the jurisdiction of the magistrate’s court to punish for contempt of court was as provided for by the Magistrates’ Courts Act No. 26 of 2015 which commenced on 2<sup>nd</sup> January, 2016 which provides as follows: Section 10 (1) of the said Act provides:

**“Subject to the provisions of any other law, the Court shall have power to punish for contempt.**

**(3) In the case of civil proceedings, the willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court constitutes contempt of court.”**

11. The trial court which in this case is the magistrate’s court therefore has the jurisdiction to deal with the application for contempt of court. It matters not whether the injunctive orders issued were temporary restraining orders or mandatory orders of injunction. The magistrates’ court is clothed with jurisdiction to deal with the same.

12. With the foregoing, I sustain the objection and strike out the application with costs to the Respondents.

**Dated, signed and delivered at Nairobi this 4<sup>th</sup> day of August, 2017**

**B. THURANIRA JADEN**

**JUDGE**