



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

MILIMANI LAW COURTS

ELC NO. 873 OF 2014

MARY WANGARI WARIUKI (Suing as the administrator of the

Estate of the late NDUNG’U WARIUKI).....PLAINTIFF

VERSUS

VIRGINIA WANJIKU NDUNGU.....1ST DEFENDANT

FREDRICK NDUNG’U NJOROGE.....2ND DEFENDANT

RULING

The Plaintiff in her application dated *22nd October 2014* prays for orders that:

- 1. Spent**
- 2. The Court be pleased to order that the Defendants Virginia Wanjiku Ndungu and Fredrick Ndung’u Njoroge are guilty of contempt of the orders issued by the court on *7th July 2014*.**
- 3. The Defendants Virginia Wanjiku Ndungu and Fredrick Ndung’u Njoroge be committed to prison for such period of time as the Court shall deem fit.**
- 4. The Defendants Virginia Wanjiku Ndungu and Fredrick Ndung’u Njoroge be heavily fined for being in contempt of the Court orders.**
- 5. The Court be pleased to direct that the Defendants do deposit in Court a security to assure their good behavior and compliance with the Court Orders in the future.**
- 6. The Court be pleased to issue any such order as it may deem fit and just.**
- 7. Costs of the application be borne by the Defendants.**

The application is premised on grounds outlined in the application and supported by an affidavit sworn by the Plaintiff. She deposes that the Court (Nyamweja J.) on *4th July 2014* directed that the *status quo* obtaining on the properties known as *Limuru/Kamirithu/1119* and *Limuru/Kamirithu 1066* be maintained until *16th July 2014* which orders were extended on *18th September 2014*. The order was

served upon Peter Baraza who acknowledged receipt on behalf of the Defendants on **8th July 2014**. However, on **20th August 2014** the Defendants proceeded to further destroy the crops remaining on the property and on **17th October 2014** they entered into property with a tractor and started ploughing in breach of the orders of the court. The Plaintiff deposes that the Defendants' actions expose the authority and dignity of the Court to ridicule and disrepute and it is therefore in the interest of justice that the orders sought be granted.

The 1st Defendant swore a Replying Affidavit on **24th November 2014** in opposing the application where she denied that they were disobeying the Court Orders. She deposed that the order clearly stated that "**Status Quo**" do obtain and at the time of the order was issued, they were on the property carrying out normal farming activities, and therefore it is untrue that they had been destroying crops as alleged.

The Plaintiff swore a Supplementary Affidavit on **8th December 2014** and deposed that as at the time the **Status Quo** order was issued, the Estate was in possession of the property but that the Defendants forcefully entered therein with the aim of dispossessing the Estate. The Plaintiff maintained that possession of the property had not been handed over to the Defendants as it was clear from the Sale Agreement that they would take possession upon completion of the balance. It is deposed that the Defendants failed to complete the balance of the purchase price even after the completion notice was issued thereby the Plaintiffs rescinded the Agreement. It was further deposed that the Defendants' depositions of carrying out normal farming activities is an admission of their own going contempt. The Plaintiff reiterated that the purpose of the application is to preserve the suit property pending the determination of the suit and that the contempt application was necessary so as to safeguard the rule of law.

The court directed the parties to file written submissions. The Defendants failed to put in their submissions despite given several chances by the Court to do so. The Plaintiff filed written submissions dated 8th December 2014 wherein counsel submitted that following the Court of Appeal decision in the case of Christine **Wangari Gachege Vs Elizabeth Wanjiru Evans & 11 Others (2014) eKLR** an application for leave to bring contempt application is no longer a requirement where committal proceedings relate to a breach of judgment, order or undertaking. Counsel also submitted that the Defendants were duly served of the contempt application as the same was received by a person duly authorized by the Defendants to acknowledge service. It was submitted on behalf of the Plaintiff that a litigant could not wrongfully and illegally bring about a state of affairs and then apply to court to preserve the state of affairs as the **status quo**. In support of this submission counsel cited the case of **M/s Gusii Mwalimu Investment Co. Ltd & 2 Others v M/s. Mwalimu Hotel Kisii Ltd Civil Appeal No. 160 of 1995 (1996) eKLR** where the Court held that:

“the status quo that could be preserved was the status quo before the illegal criminal acts on the part of the Defendant.”

On **4th July 2013** when the Plaintiff's application came up for hearing *ex-parte*, this Court (Nyamweya J.) issued orders, inter-alia, that:

“In the meantime, the status quo obtaining on the property known as Limuru/Kamirithu/1119 and Limuru/Kamirithu 1066 as of today, 4th July 2014 to be maintained until 16th July 2014.”

It is this order that the Plaintiff avers has been disobeyed by the Defendants who have entered into the suit property and destroyed the remaining crops. This averment is disputed by the Defendants, who claim that as at the time the *ex-parte* order was made, they were already in possession of the property, carrying out normal farming activities and therefore status quo obtaining meant they continue with their activities. In response, the Plaintiff avers that the Defendants could not lawfully be in possession of the property because they had not completed the balance of the purchase price. The Plaintiff referred the Court to **clause 5** of the **Sale Agreement** entered into by both parties which states:

“The purchaser shall take possession, use and development of the aforementioned parcels of land upon completion of the balance.”

It is noteworthy, that the contempt application is brought on the basis of an order of the court obtained ex-parte before the Court took consideration of the Defendants’ side of the story. This is not to state that the ex-parte orders should not be obeyed. On perusal of the Plaintiff’s application in view of the Defendants’ response, as to who is in possession and legally so has not been determined. Making a finding in this respect without first entertaining the application ***inter-partes*** would be to pre-empt the finding of the application. Consequently, it is uncertain to this Court in whose favour the status quo order was since the party in possession is yet to be ascertained. Whereas I choose to refrain from finding that the Defendants are culpable of contempt of the court orders, I wish to reiterate very strongly that court orders must be obeyed and when in doubt parties should approach the court to seek interpretation or clarification.

The Plaintiff’s application is dismissed with no order as to costs. This notwithstanding, I hereby make an order that no party shall enter into, cut tress, plough, carry out any activities or in any way alienate the suit property pending the determination of the Plaintiff’s application dated ***4th July 2014***, or until further orders of this court.

Dated, Signed and Delivered this 12th day of June 2015

L.GACHERU

JUDGE

In the Presence of:-

.....For the Plaintiff

.....For the Defendants

..... Court Clerk

L.GACHERU

JUDGE