



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 258 OF 2008

IN THE MATTER OF THE ESTATE OF ZAKARIA NTHIGA MATUMO (DECEASED)

JACKSON KAMAU NTHIGA PETITIONER/RESPONDENT

V E R S U S –

HUMPREY KIRIMI OBJECTOR/APPLICANT

MARY MUTHONI INTERSTED PARTY/APPLICANT

RULING

1. The Applicant through a chamber summons dated 17th March 2015 sought the following orders;

(a) The honourable court be pleased to direct the O.C.S Chuka Police Station to arrest the petitioner Jackson Kamau, his agents, employee or anybody acting on his behalf for contempt of court of orders dated 12th August, 2013.

(b) That costs of this application be provided for.

(c) That the honourable courts do make any other order it may deem fit to grant in the circumstances.

The application is premised on the following grounds:-

(a) That the petitioner and his agents chased the applicant from his portion, cultivation and planted and fenced on 14th March 2015.

(c) Court on 12th August 2013 issued an order of status quo which the respondent/petitioner has disobeyed.

2. The application is supported by an affidavit of Humprey Kirimi. It is imperative to note from the outset that the provisions of law upon which the application has been brought has not been stated. Be that as it may, the applicant/objector case is that on 8th August, 2013 he made an application dated 29th July 2013 for orders of status quo pending the hearing of the cause.

3. The honourable court then proceeded to issue orders for status quo and ordered all the parties to maintain the same and desist from committing any act of waste on the applicant/objector's portion. It was the applicant/objector's contention that he has been living in peace until 14th March 2015 when the petitioner/respondent forcefully came with his agents and chased him away from his portion and started cultivating and planting on the same thus provoking the instant application.

5. The application was opposed. It was contended by the petitioner/respondent that he was not served with the order referred to by the applicant and that no status quo has been disturbed as alleged. It was on the other hand contended by the applicant/objector that indeed the petitioner was served by one Francis Maina, a court process server; through the area chief of Itunguru Location, where he lives and that the objector has only cultivated the land since 1995 up to this year when he was chased away by the petitioner and started developing his portion of land.

6. I have considered the pleadings and annexures in support of the application and the rival submission by the parties. It is not in dispute that this honourable court on 8th August 2013 issued an order for maintenance of status quo in absence of the petitioner and directing all parties in this cause, their agents, servants or anybody else acting on their behalf or their behest to desist from committing acts of waste on portion being cultivated by the applicant pending the hearing and final determination of this cause.

7. The applicant/objector contended that the court's order of 8th August, 2013 was served on the petitioner by one Francis Maina, a court process server, through the area chief of Itugururu location where the petitioner resides. On the other hand the petitioner denies having ever been served with the court's order.

8. Though the objector/applicant contended that the petitioner was served with the court's order by one Francis Maina a court process server, there is no evidence of service either in the form of an affidavit of service or otherwise, to show that indeed the petitioner was served, neither did the objector state when and where the petitioner was served. The alleged served order as extracted was not attached to the applicant's application. The one in court file dated 12th August, 2013 has no penal notice to show that any party found disobeying court order would be subjected to punishment by court.

8. In light of the circumstance of this case and having found that there is no evidence of service and the order extracted having no penal notice and having not been attached to the application the orders that the applicant/objector is seeking cannot issue.

9. It is a principle tenet of law that court orders are not made in vain as the same would be tantamount to an abuse of the court process. I also note that the applicants/objectors are acting in person and as such they did not follow the laid down procedure as regards serving of the court's order and seeking orders as one in their application as the petitioner has deponed that the status quo is as per court's order of 12th August 2013. The same should be obeyed by all as ordered by court in default parties are at liberty to move the court for appropriate orders.

10. That as there is a pending Succession Cause and the parties respective interests are yet to be determined I direct the parties do set this matter down for hearing of application for revocation of the grant instead of spending much of the time on unnecessary applications. Each party to bear its own costs.

DATED at Meru this 17th day of September, 2015.

J.A.MAKAU

JUDGE

17.9.2015

Delivered in open court in the presence of:

Ms. Gituma for petitioner/respondent – present

Objector/interested parties in person –present

Court clerks – Faith/Ibrahim

R.V.P. WENDOH

JUDGE

17.9.2015