



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

THE ENVIRONMENT AND LAND CASE NO. 65 OF 2012

DAVID MURIUKI KIUGU.....PLAINTIFF

VERSUS

ALEX MUREITHI NAAMAN.....DEFENDANT

RULING

This ruling is brought to Court under Order 40 Rule 3 (1) and 2, Order 51 Rule 1 of the Civil Procedure rules, Sections 1A, 1B and 3A of the Civil Procedure Act and all the other enabling provisions of the law. The application is dated 24th September, 2015 and seeks orders:-

1. ***THAT this honourable Court be pleased to certify this application to be of utmost urgency and service on the respondents be dispensed with in the first instance.***
2. ***THAT this honourable Court do and hereby commit the District Land Registrar, the 1st Respondent and District Surveyor, the 2nd Respondent to prison for a maximum period of six (6) Months for deliberately refusing and/or to continue to disobey, flout or circumvent this court's order issued on 8th October, 2013.***
3. ***THAT pending interpartes hearing of this application, Officer Commanding Station Meru Police Station or such Officer as may be designated in the Kenya Police or Kenya Police Administration be directed to ensure the respondents hereof are in compliance with the order issued by honourable Justice Njoroge.***
4. ***THAT this Honourable Court be pleased to order the respondents to pay the defendant/applicant special damages for loss of use of the said parcel until the date of compliance of the order.***
5. ***THAT the cost of this application be awarded to the defendant.***
6. ***THAT further or other orders be made as the court shall deem fit.***

The application is supported by the affidavit of Alex Murithi Nathan and has the following grounds:-

- a) This 8th October, 2013, honourable Justice Njoroge, the High Court Judge, Environment and Land Court issued an elaborate and concise order that the District Land Registrar, the District Surveyor or both parties and their counsel do revisit the land parcels

NTIMA/IGOKI/3568 and Ntima/Igoki/3301 and fix proper boundaries and beacons in accordance with the registries and titles

- b) In granting the aforesaid order and due to the nature of the issue raised in the suit, the honourable Justice Njoroge, was very categorical that the orders were to be effective pending the hearing and determination of this suit.**
- c) In blatant disobedience of the court orders aforesaid, the respondents have continued not to honour the order and held parties at ransom with the determination of the suit pegged on their visit.**
- d) The conduct of the respondents if left unchecked shall embolden the parties herein and other subjects of the honourable court to defy and disregard its orders.**
- e) The course of justice in these proceedings has been subverted and prejudiced by the conduct of the 1st and 2nd respondents.**
- f) A party in contempt of court cannot be heard until he/she has purged his/her contempt.**
- g) The conduct of the respondents aforesaid not only deprives the defendant/applicant right to enjoy private property but also expose the court to ridicule.**
- h) It is in the interest of administration of justice that Officer Commanding Police Station, Meru Police Station be directed to enforce the said orders so as to ensure that the dignity of the honourable court is upheld.**

On 5.10.2015 the parties tendered a consent which this court adopted as its order. The consent was in the following terms:

“By consent we agree to attend the demarcation to mark boundaries to the suit lands in company of the District Land Registrar, the District Surveyor and Counsels for both parties (defendant and plaintiff) on the 9th October, 2015”

On 11.10.2015, the parties informed the Court that Mr. B. K. Kamwaro, the Land Registrar and Mr. A. M. Njagi, the District Surveyor had on 10.11.2015 filed their report which all of them were satisfied with. In the circumstances, I find that the two public officers had fully obeyed the Court orders which spawned this application which was for contempt of Court proceedings. This application is, therefore, marked settled. Mr. B. K. Kamwaro, Land Registrar, and Mr. A. M. Njagi, Land Registrar, are excused from attending any further proceedings in this matter, unless the court finds their attendance necessary.

It is so ordered.

Delivered in Open Court at Meru this 11th day of November, 2015 in the presence of:

Cc. Daniel/Lilian

Mutuma for Defendant/Applicant

Ondari absent for the Plaintiff

Miss Kungu for respondents

P. M. NJOROGE

JUDGE