



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISCELLANEOUS APPLICATION NO. 326 OF 2010

CHARLES NJUGI NJIHIA.....APPLICANT

VERSUS

DISTRICT SURVEYOR NAKURU^{1ST} RESPONDENT

DISTRICT LAND REGISTRAR, NAKURU.....^{2ND} RESPONDENT

RULING

1.This ruling is on an application made by the applicant by way of notice of motion dated **30th May , 2011** under order 5(1) of the Judicature Act Cap 8 Laws of Kenya, order 52 rule 3 of the rules of the Supreme Court practise rules and pursuant to leave granted on 6th May, 2011.

It seeks among other orders that:

This honourable court be pleased to punish the respondents by committing them to civil jail for a period of six months/ and or having their property attached and sold for disobeying the court order issued on 15th July, 2010 and the usual order on costs.

2. The application is based on the annexed affidavits of Charles Njugi Njihia, statutory statement, verifying, supporting and supplementary affidavits sworn by Charles Njugi Njihia on 5th May, 2011, 30th May, 2011 and 20th February, 2012 and is premised on the grounds that :

- (i) The respondents were ordered by this Honourable court to rectify the boundaries and access road as per the Area map of Subukia/ Subukia Block 12/308 within (30) days on the 8th of July 2010.
- (ii) The said order issued on 15th July, 2010 was duly served upon the respondents herein.
- (iii) The respondents failure to comply/ or obey the order is wilful and deliberate
- (iv) The respondents actions and disobedience are a ridicule and mockery of the judicial process and justice
- (v) The applicant has been subjected to untold suffering since he has no access road. He

has actually been rendered landlocked.

3. The application is opposed. The 2nd respondent through Daniel Kimori Nyantika swore a replying affidavit on 20th January, 2012.

4. On 4th July, 2012 directions were taken that the application be disposed of by way of written submissions which both parties filed.

5. To understand why there was such departure between the two reports filed by the Land Registrar and Land Surveyor on 19th August, 2010 and 20th June, 2013 and what the court had ordered them to do, I took the liberty to peruse the court record. I found that there was an original file and a skeleton file.

6. On the original file, Mr Hari Gakinya on 8th July, 2010 appeared before Maraga J (as he then was) ex parte. This is what was recorded of Mr Gakinya's submissions ;

" The applicant has no access road. He has no problem with his neighbours but nobody seems to know where exactly the road is. I apply that the respondent be directed to identify the road as per the survey map."

7. Maraga J (as he then was) ordered as follows:

"1. Application is hereby granted

2. The respondent to identify the access road at the applicants costs within 30 days" (Emphasis mine)

8. In the same original file the order extracted on 15th July, 2010 was as follows:

"That the respondents do rectify the boundaries and the access road within 30 days at the applicants costs"

9. An affidavit of service was filed on 12th October, 2010 then the file disappeared.

10. On 23rd November, 2010 Kiplenge & Kurgat Advocates wrote to the Deputy Registrar that they had been retained as the new Advocates for the applicant but they could not trace the file to enable them come on record. A skeleton file was reconstructed pursuant to a court order made by the Deputy Registrar on 9th December, 2010 and the necessary papers were filed. It appears that the counsels now on record may not have known what the real orders by Maraga J were. For this reason and this reason alone, I will not make any orders against the firm of Kiplenge & Kurgat Advocates.

11. The way the order was extracted on 15th July, 2010 is of great concern to this court. As a result of that order, a lot of resources have been spent and court's time wasted. This court cannot even begin to consider the merits or demerits of the application as it is based on an nonexistent order. I choose to say no more.

12. Accordingly, the application dated **30th May , 2011** is hereby dismissed with costs.

Dated and delivered at Nakuru this 24th day of January 2014.

L N WAITHAKA

JUDGE

PRESENT

Mr Kurgat for the Applicant

N/A for the Respondent

Emmanuel Maelo : Court Assistant

L N WAITHAKA

JUDGE