



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION
ELC. NO. 539 OF 2009

PETER C. GATOTO KARANJA.....PLAINTIFF

VERSUS

STEPHEN KARANJA GATOTO.....DEFENDANT

RULING

Coming before me for determination is the Ex-parte Chamber Summons dated 24th February 2014 in which the Defendant/Applicant seeks for leave to institute contempt proceedings as follows:

1. That James Wanyoike Gatoto, Stephen Karingu, Samwel Kangere Gatoto, Teresiah Nduta, Peter Chuchu and Michael Kinuthia be committed to civil jail for disobeying and being in contempt of orders dated 18th November 2009 and 30th June 2010 in this suit.
2. That the properties of James Wanyoike Gatoto, Stephen Karingu, Samwel Kangere Gatoto, Teresiah Nduta, Peter Chuchu and Michael Kinuthia be attached for being in contempt of orders dated 18th November 2009 and 30th June 2010 in this suit and be disposed as directed by this Honourable Court.
3. The OCS Githunguri to ensure compliance and enforcement of this Court's orders in this case.
4. That Leave so granted to the applicant to institute contempt proceedings do operate as an order of injunction restraining the contemnors James Wanyoike Gatoto, Stephen Karingu, Samwel Kangere Gatoto, Teresiah Nduta, Peter Chuchu and Michael Kinuthia from entering into, using, or continuing to enter into and using the portion of the suit property occupied by the Defendant, his family, brother, mother and their families, a portion of the suit property being Githunguri/Nyaga/8 subdivided into Githunguri/Nyaga/1275-1277 which was further subdivided into Githunguri/Nyaga/1424-1432.

The Chamber Summons is supported by the grounds appearing on the face of it together with the Supporting Affidavit of Stephen Karanja Gatoto sworn on 24th February 2014 wherein he averred that his late father, Moses Gatoto, had two wives and divided the ancestral land, namely Githunguri/Nyaga/8, into two portions for each of his wives. He further averred that he together with his family, his brother Benson Njoroge and his mother occupy one portion while the other portion is occupied by the Plaintiff and his brothers being James Wanyoike Gatoto, Stephen Karingu, Samwel Kangere Gatoto, Peter Chuchu and Michael Kinuthia and their sister-in-law Teresiah Nduta. He further averred that the Plaintiff caused a

subdivision of the property and obtained title to Githunguri/Nyaga/1430 which has access through the land occupied by his side of the family. He further stated that the Plaintiff's other brothers also have title to their respective portions with access through the portion they occupy. He further stated that the matter came to court for the hearing of the application for interlocutory injunction by the Plaintiff and the Court on 18th November 2009 ordered that the status quo then prevailing be maintained. He further stated that later on 30th June 2010 the parties agreed that the status quo be maintained pending the hearing and determination of the suit. He further stated that those orders were made in court in the presence of the Defendant. He further stated that sometime on or about September 2010, the Plaintiff hired 3 people armed with machetes who began to plough and dig trenches on his and his family's part of the property resulting in a meeting being held at the Githunguri Police Station to resolve the issue. He stated further that after that meeting, the Plaintiff and his brothers ceased from interfering with his quiet possession of the suit property. He then indicated that on 21st February 2014, the Plaintiff and his side of the family with their agents destroyed the fence on his side of the property, destroyed napier grass and banana crops and commenced to create several pathways through their portion of the property which they dug and filled with stones and rocks. He further stated that they persisted to do the same through the following day 22nd and 23rd February 2014.

Being an ex-parte application, the Plaintiff's counsel was excused from participating in this application.

After careful perusal of this application, I have formed two impressions. The first is that the persons whom the Defendant wishes to cite for contempt being James Wanyoike Gatoto, Stephen Karingu, Samwel Kangere Gatoto, Teresiah Nduta, Peter Chuchu and Michael Kinuthia all happen not to be parties to this suit. It is noteworthy that the Defendant has not sought to cite the Plaintiff for contempt. The orders of this court which the Defendant contends have been disobeyed only bind the Plaintiff and not those other people. Accordingly, those people cannot be cited for contempt in this case.

Secondly, the subject matter of this suit is the parcel of land known as Githunguri/Nyaga/1429. However, in his application, the Defendant has cited the parcel of land known as Githunguri/Nyaga/8 subdivided into Githunguri/Nyaga/1275-1277 which he says was further subdivided into Githunguri/Nyaga/1424-1432. This larger portion of land is not the subject matter of this suit. The orders that the Defendant complains have been contravened do not apply to this larger piece of land.

In addition, I note that this suit is part-heard. Parties should strive to have this suit heard to completion and judgment entered so that a final resolution can be found to this long outstanding dispute. I am of the view that the parties should focus on achieving this instead of focusing attention on orders issued by this court several years ago as a form of interim relief until the suit is fully heard and determined.

With this background, therefore, I decline to grant leave as requested and also decline to grant the other consequential prayers in this application. Accordingly, I hereby dismiss this application. Costs shall be in the cause.

SIGNED AND DELIVERED AT NAIROBI THIS 21st _____DAY OF March 2014

MARY M. GITUMBI

JUDGE