



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL MISCELLANEOUS (JR) NO. 5 OF 2012

THE REPUBLICAPPLICANT

VERSUS

COUNTY COUNCIL OF OLEKEJUADO.....1ST RESPONDENT

CONTINENTAL INTERGRATED

INDUSTRIES LTD.....2ND RESPONDENT

JAMES KAGONIA WARUI3RD RESPONDENT

AND

NATIONAL BANK OF KENYA LTDEX-PARTE APPLICANT

RULING

1. In an application dated 13th January, 2014 brought by way of Notice of Motion, the *Ex-parte* Applicant seeks the following orders;-
 - i. That the 1st respondent be cited for contempt of court for disobeying the Honourable court's order made on 18th September, 2012
 - ii. that the Town Clerk (or the official serving in equal capacity of County Council of Olkejuado, the 1st Respondent herein be committed and detained in civil Jail for a period not exceeding six(6) months for contempt of the orders of the Honourable court made on 18th September, 2012.
 - iii. **That** the costs of this application and for obtaining leave be borne by the 1st respondent.
2. The application is premised on the following grounds:-
 - i. **That** the 1st respondent has failed/refused and or neglected to comply with the Orders of the Honourable Court of *Certiorari, Prohibition and Mandamus* made on **18th September, 2012, which** orders compelled the 1st respondent to give its consent for transfer of Title *No. Ngong Township/Block II/284* to **James Kagonia Warui**, the 3rd Respondent herein.
 - ii. **That** despite service of the order upon the 1st respondent together with Notice of Penal consequences, the 1st respondent has failed/neglected and/or refused to Honour the order to the detriment of the 3rd respondent who was the purchaser of the suit property and the applicant who was a chargee exercising its statutory powers of sale.

- iii. **That** there is no order of the Honourable Court that has been granted in favour of the 1st respondent to stay the orders made on **18th September, 2012**, nor has any appeal been lodged by the 1st respondent against the said orders.
- i. **That** the applicant made an application seeking leave to cite the 1st respondent for contempt, which leave was granted by the Honourable Court.
3. Further, it is supported by an affidavit deponed by **Clifford Okello Rachuonyo**.
4. **Asike-Makhandia ,J** (*as he then was*) granted orders of *certiorari, prohibition* and *mandamus* against the 1st respondent, compelling it to give consent for transfer of **Title No. Ngong Township/Block/11/284** to the 3rd respondent.
5. The order with the Penal Notice was served upon the 1st respondent who has neglected and/or failed to comply with the order of the court.
6. Leave to institute contempt proceeding was granted by this court on the **9th day of December, 2013**.
7. The 1st respondent on being served with the application instructed its advocate who appeared on the **20th day of May, 2014**. He sought leave of the court to file a response to the application. Leave was duly granted. However, he neither filed a reply to the motion nor appeared in court on the date scheduled for hearing. The application was therefore unopposed.

Issues for determination are;-

- v. Whether the 1st respondent was served with the order of the court.
- v. Whether the purported contemnor is indeed in contempt of court.
8. An affidavit deponed by **Haggai Ochieng Akello** states that he went to the office of the 1st respondent and effected service of the order upon the 1st respondent's authorized officer who accepted service and even duly appended his signature on the copy of the document. This averment is not in dispute. Having acknowledged service at the office of the 1st respondent and being an authorized officer to receive the documents, service was proper.
9. It is not in dispute that the order made by the court requiring the 1st respondent to consent for transfer of the property in issue has not been complied with. It was stated in the case of **Mwangi H.C. Wangondu versus Nairobi City Commission, Nairobi Civil Appeal No. 95 of 1998** that the threshold of proof required in a case of contempt of court is higher than the proof required in civil case. One can only be committed to jail or otherwise penalized if there is satisfactory evidence that leaves no doubt as to the contemnor's guilt.
10. This is a case where it is not in dispute that the 1st respondent has deliberately disobeyed the court order. Consequently, I find the contemnor being in contempt of the court.
11. It is ordered that summons shall issue for the officer serving in the capacity of the Town Clerk, of the 1st Respondent to appear before this court to show cause why he/she should not be committed to civil jail for a period of **six (6) months** for contempt of the order of the court dated **18th September, 2012**.
12. Costs of the application shall be borne by the **1st respondent**.
13. Mention on the **30th June, 2014** for directions/further orders.

DATED, SIGNED and DELIVERED at MACHAKOS this 27TH day of MAY, 2014.

L.N. MUTENDE

JUDGE