



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC CIVIL APPLICATION JR ELC NO. 11 OF 2012
IN THE MATTER OF ORDER 53 RULES 1, 2, 3 OF THE CIVIL PROCEDURE ACT
AND
IN THE MATTER OF THE ESTATE OF HEMED KALE HEMED
AND
IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
ORDERS OF MANDAMUS

ROBIN PAUL ANGUS.....APPLICANT

VERSUS

MARIAM HEMED KALE.....1ST RESPONDENT

ROBERT NYAKERUMA.....2ND RESPONDENT

E WAFULA.....3RD RESPONDENT

RULING

1. By a Notice of Motion dated 30th July, 2014, the applicant herein, **Robin Paul Angus**, seeks the following orders:
1. That the 1st respondent herein be punished by committal to jail for being in contempt of this Honourable Court, in attempting to subvert the cause of justice by deliberate misuse and distortion of a spent court order.
2. The 2nd and 3rd respondents be censored or appropriately punished for deliberately misreading the relevant court order and failing to diligently establish its authentic contents thereof and then proceeding to induce other officers to take steps to abrogate the applicant's title.
3. That this Honourable Court do review its ruling and set aside its order absolving the 1st respondent of the costs of the juridical review application thus allowing the applicant to recover the costs of said application from the ex parte applicant.
4. That this Honourable Court make a clear and unambiguous pronouncement of its judgment dismissing the judicial review application herein to avoid an abuse of the process of this

court.

5. **The costs of the present application be provided against the 1st respondent.**
2. The basis of the applicant's application as can be gleaned from the supporting affidavit is that despite the *ex parte* applicant having failed to obtain the orders she was seeking in these proceedings the *ex parte* applicant has continued to claim that she in fact won the case.
3. It was contended that the officers of the lands office have been hoodwinked by the *ex parte* applicant's bragging into believing that the *ex parte* applicant actually won the case.
4. According to the applicant, the *ex parte* applicant's conduct has been fuelled by the fact that the Court did not award the costs of the proceedings to the applicant.
5. It was on the foregoing basis that the applicant sought that the *ex parte* applicant be committed to jail.
6. In response to the application the *ex parte* applicant filed a replying affidavit sworn by herself on 7th November, 2014 in which she denied the allegations made by the applicant.
7. I have considered the cases of the respective parties herein as expounded in the rivalling affidavits as well as the submissions of record.
8. According to ***Black's Law Dictionary***, 9th Edition at page 360:

“Contempt is a disregard of, disobedience to, the rules or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behaviour or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body.”

9. In this case the allegations made against the *ex parte* applicant even if true cannot even remotely come near to being contempt. The mere fact that a person alleges that she has succeeded in a suit when she has not does not amount to that person being in contempt of court. This Court does not play the role of a prefect over what people say as long as they do not bring the Court process into disrepute and I do not see how an incorrect exposition of an outcome of litigation can without more be stretched to bring the court process into disrepute. Contempt is a serious matter that ought not to be treated lightly and a person cannot be committed for simply expressing an incorrect view of the outcome of litigation.
10. As was held in **Mary Anne Njuguna vs. Joseph Njuguna Ngae Civil Application No. Nai. 195 of 1997:**

“A judge is not concerned with what litigants may brag or boast as he is only concerned with dispensing justice according to law, and any boasts made by litigants ought not to perturb or even bother a Judge.”

11. With respect to the issue of costs if the applicant is aggrieved by the Court's decision thereon the applicant ought to appeal against the same rather than to attack the said decision on an application for contempt since costs are awarded by the Court and not by parties.
12. In the result I find the Notice of Motion dated 30th July, 2014 unmerited and the same is dismissed with costs to the *ex parte* applicant.

Dated at Nairobi this 17th day of December, 2014

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Angima for the Applicant

Ex parte Applicant in person

Miss Odhiambo for the Respondent

Cc Richard