

REPUBLIC OF KENYA

High Court at Kakamega

Civil Case 28 of 2012

SARAH KASIDI MULUSA.....PLAINTIFF

V E R S U S

JOSEPH AMBEYI MULUSA.....DEFENDANT

R U L I N G

In her application dated 3rd July 2012 the plaintiff/applicant seeks to have the defendant cited for contempt of court and be imprisoned for a period not exceeding six months or payment of damages or both. The application is supported by her affidavit sworn on the 3rd of July 2012.

During the hearing of the application, the applicant relied on her application and urged the court to punish the respondent. Mr. Anziya, counsel for the respondent relied on the replying affidavit sworn on the 17th of September 2012.

The court record shows that the court granted interim orders as per the plaintiff's application dated 8th February 2012. The orders were made on 25th June 2012 restraining the defendant from dealing with plot number **ISUKHA/VIRHEMBE/1283**. In his replying affidavit, the defendant maintains that he lives on the suit land. The land belonged to his late father and the plaintiff is his step mother. The defendant has also annexed documents showing that the plaintiff sold him the land for KShs.30,000/=. The defendant maintains further that he was not served with the court order or the summons.

According to the affidavit of service by Wycliffe Okutoyi Omukuba sworn on the 5th of July 2012, he served the court orders upon one Aphon Mulusa, the defendant's daughter as the defendant was not at home. It is clear therefore that the defendant was not personally served with the court order and cannot be held to be in contempt. I have read the pleadings of both parties and I am satisfied that there was no disobedience of the court orders. The best way forward is for both parties to be heard and the court makes its decision on the main application for injunction. The orders were granted ex-parte and the defendant contends that he lives on the suit land.

In the end, I do find that the application dated 3rd July 2012 is not merited and the same is dismissed. Each party to meet his/her own costs.

Delivered, dated and signed at Kakamega this 7th day of February, 2013

**SAID J. CHITEMBWE
J U D G E**