



REPUBLIC OF KENYA

High Court at Embu

Miscellaneous Application 194 of 2011

JOHN GICHOVI NJIRU.....APPLICANT

V

LAWRENCE RUTERE T/A

GIANT AUCTIONEERS.....RESPONDENT

CYRPIANO NJERU KAMAU.....INTERESTED PARTY

R U L I N G

This is the application by way of chamber summons dated 8/11/2011 seeking leave to apply for an order of committal to prison of the respondent Lawrence Rutere trading as Giant Auctioneers.

The main ground being that the respondent has disobeyed a court order by Hon. Justice Kimaru. The said order was to the effect that all proceedings against policy holders of United Insurance. And that the said order was served on the respondent who proceeded to advertise the parcel of land Embu Municipality/1526 for sale. The applicant has filed a statement and verifying affidavit. He annexed copies of the said order and advert for sale JG III & IV.

The respondent filed a replying affidavit in which he denies having been served by any order. He further states that the order JG II does not restrain anybody from doing anything. The interested party filed grounds of opposition. He states that the applicant had not demonstrated that the respondent or anybody else had been served with the said court orders with penal consequences.

Both counsels agreed to dispose off the application by way of written submissions. Only Mr. Okwaro for the respondent and interested party filed submissions. The matter came up severally for mentions for submissions but Mr. Ndegwa for the applicant had not filed his.

The applicant is seeking leave to file contempt proceedings against the respondent for disobeying a court order dated 15/9/2011. This order (JG II) extends the appointment of Kenya Reinsurance Corporation Limited as statutory manager of United Insurance Limited for a period of 6 months with effect from 15/9/2011. There is an earlier order dated 23/10/2009. This earlier order stayed all proceedings against United Insurance Company Limited from 16th June 2009. The stay must have expired on 15/12/2009. Was there any further extension?

The order of 15/9/2011 as extracted is totally different from the one of 15/6/2009 which captured even cases against policy holders of the said Insurance Company. The alleged disobedience is said to have occurred on 18/11/2011 when the respondent an auctioneer advertised the land in issue for sale. The issue that then comes up is whether the respondent and interested party were served with the orders dated 15/6/2009 and 15/9/2011.

There is no evidence or material before this court to confirm that the respondent Lawrence Rutere was served with any order which he refused to obey. Secondly the order of 15/9/2011 does not talk about policy holders or any other party besides the statutory manager. It was the duty of the applicant first of all to show there was an order of the court addressed to persons including the respondent. Secondly it was his duty to show the court that indeed the respondent had been served with the said order. Thirdly that the order was disobeyed by the respondent.

I do find that the applicant having not satisfied the court that the three points mentioned issues above exist can not be a beneficiary of leave to institute proceedings for contempt. I therefore dismiss the application dated 8/11/2011 with costs.

DELIVERED, DATED AND SIGNED AT EMBU THIS 7TH DAY OF MAY 2013.

H.I. ONG'UDI

JUDGE

In the presence of:-

N/A for or by parties

Njue CC