

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. CIVIL APPLICATION NO. 105 OF 2010

JOHN NJOROGE GICHORAAPPLICANT/RESPONDENT

VERSUS

GIDEON NUMA..... RESPONDENT/APPLICANT

RULING

Notice of Motion dated 15/12/2011 seeking the dismissal of application dated 17/3/2010 has been overtaken by events.

The lower court which made orders has already found and held that orders sought to be enforced through the motion are incapable of being complied with. The lower court has therefore discharged those injunction orders. The continued prosecution of this motion is abuse of court process and oppressive to applicant and is also against the overriding objective of civil litigation.

The application is supported by affidavit of Gideon Numa the respondent who has attached Exh. GNI as the orders referred to. It is sworn that the Respondent seeks to commit him to civil jail for disobeying those orders.

Mr. Uma appealed to High Court appeal 42A of 2010 which is still pending. He also applied for stay of execution which has now been discharged. Then by time stay was discharged there were changes and it became incapable of compliance without orders.

On 10/11/2010 he applied to discharge the orders. Ruling made on 1/2/2011 and 22/7/2011 marked GN3a and (b). The consequences were to render respondent appeal and the motion to be overtaken by events. On 30/8/2011 his advocate wrote to applicant to withdraw these proceedings but the advocate failed to respond.

In his replying affidavit the respondent admits that the situation has changed but states that the appeal lodged and stay application are both not withdrawn. Also that the landscape adjacent to the road has changed but situation remains the same. The applicant had dumped soil next to his plot which has not been removed. It is therefore not true that the order is incapable of enforcement. The applicant is trying to avoid to comply with court order.

Upon reading the replying affidavit I do not find that the applicant application is truthful. He is not candid and he is trying to avoid complying with court order which is subject to appeal still pending into court.

I therefore dismiss the application with costs to respondent.

Dated and delivered this 23rd day of March, 2012.

**KHAMINWA
JUDGE**