



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

SUCCESSION CAUSE NO. 21 OF 2008

IN THE MATTER OF THE ESTATE OF SHADRACK ONYANGO (DECEASED)

BETWEEN

JUDITH MARTHA ONYANGO

CALVIN M. ODHIAMBO

CLEMENT OMONDI ONYANGO.....RESPONDENTS/PETITIONERS

VS

ROSELIDAH OLUOCH

DUOGO

WILLIAM OTIENO DUOGO

JOSEPH OUMA

DUOGO

GILBERT ONYANGO DUOGO

MOSES OKOTH DUOGO

PATRICK UHURU DUOGO.....OBJECTORS/APPLICANTS

R U L I N G

This is an application by objectors/applicants herein that the respondents, who are the petitioners herein, should be found guilty of contempt of court for breaking an order of this court made on 25th June 2009 to the effect that they should maintain a then a status quo.

By a Chamber Application dated 24th March 2009, the applicants/objectors herein obtained an order granting interim orders pending the hearing of the application on a date to be given by the Deputy Registrar. The prayers which had been granted were: -

a) That the petitioners/respondents, their servants and representatives or agents are restrained from intermeddling with the deceased's property and especially land parcel No. Bungoma/Naitiri/122

pending the hearing and determination of this cause.

b) That the status quo which had been prevailing previously in terms of occupation of the deceased's land by objectors shall be reinstated or be maintained until the cause is heard and determined.

By 15th October, 2009 Mr. Makokha for the petitioners/respondents had not filed any replying affidavit and sought permission to do so with an undertaking to maintain the status quo which the court promptly endorsed by an order.

Then the applicants/objectors filed an application dated 8th March 2010 by another Chamber Summons seeking leave to file contempt proceedings against the respondents for not obeying the above orders. In the same application, they sought orders for contempt against them without filing an independent application seeking such order. This means that the application seeking leave to file a Notice of Motion, was made the main application for contempt.

I have perused the written submission from both sides. The applicant claims that the respondents deliberately disregarded and broke the interim orders which were acknowledged and undertaken to be obeyed by them.

The respondents admitted that they learnt that an order to restrain them from leasing out the land or intermeddling with it had been made and that they were expected to maintain the known status quo until the suit is heard and determined. They however, deny having been served with the order. They claimed that the order may have been sent to them to Nairobi by post while the respondents resided in Bungoma.

I have considered both submissions. It is my view that the order, the subject of this application, is an interim order which was expected to be confirmed or rejected during the hearing on the application under which it was granted. It was a discretionary order granted by the court in equity and required to be handled with great respect to the court that granted it as such an interim order to save the subject matter before the same would be confirmed inter partes. What we however see here is a party, who having been granted an interim order, decided in disregard of the law, to make it permanent, and thus abuse the favourable exercise of court's discretion in its favour. To date, it would appear, the application seeking the temporary restraining orders, has not been fixed for a hearing inter partes.

Secondly, it was necessary for the applicants/objectors who obtained leave of court to file an application seeking orders of contempt, to file such an application. It was in my view, improper to purport to proceed to seek contempt orders in the application which was intended for seeking leave. In my view, therefore, there is no independent application seeking contempt orders, and the present one was, in my view, exhausted on obtainance of the leave.

Finally, contempt orders are to be granted to a party who has meticulously followed the process of granting such orders. This is because such order is equitable and those entitled to it must show that their hands are clean. I am conscious of the fact that court order must at all times be obeyed by those required to obey them. However, contempt orders will only be issued in the clearest of circumstances.

In this case, the court clearly made interim orders which were never matured by the parties who obtained them. It is not clear even today whether or not the interim orders above stated are alive or not. This court cannot, therefore, make such interim and probably, non-existent orders, the basis of contempt even if it is clear from the record, the respondents' advocate endorsed them as such interim orders.

In the circumstances, the application is dismissed with costs. Status quo will be maintained until the application for restraining orders now pending in this court is fixed for hearing, heard and determined.

Orders accordingly.

Dated and delivered at Bungoma this 8th day of March, 2012.

.....

D A ONYANCHA
JUDGE