



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
SUCCESSION CAUSE 434 OF 2003

IN THE MATTER OF THE ESTATE OF PAUL NGOLU NZYOKA - DECEASED

NDULU NGOLU NZYOKA PETITIONER/RESPONDENT
VERSUS

- 1. NICHOLAS MUENDO MUSANGO.....INTERESTED PARTY/APPLICANT**
- 2. GEORGE SILA KANYOLE INTERESTED PARTIES/RESPONDENT**

RULING

Before me is an application dated 6th April 2009 filed by the 1st interested party Nicholas Muendo Musango. It was filed under section 47 of the Law of Succession Act (Cap 160), as well as section 5(1) of the Judicature Act (Cap 8), and section 3A of the Civil Procedure Act (Cap 21) as well as Order L Rule 1 of the Civil Procedure Rules. The prayers are two, as follows:-

- 1. THAT the Honourable court be pleased to cite and punish the 2nd interested party by imprisonment for a term not exceeding six months for being in contempt of this honourable court's order dated 13/11/2008.**
- 2. THAT costs of and incidental to this application be borne by the 2nd respondent.**

The application has grounds on the face of the summons. The main ground is that though the court on 13th November 2008, in the presence of the 2nd interested party, gave orders that the status quo be maintained pending the hearing and determination of the cause herein, the 2nd interested party had in blatant disregard of the same on diverse date continued to commit acts of waste by ploughing and digging up on the land.

The application is opposed. A replying affidavit sworn by the 2nd interested party on 18th June 2009 was filed. It was deponed that when the order for maintenance of the status quo was issued on 13/11/2008, he was in possession of the suit land and was still in possession of the suit land.

Parties, through their counsel O.N. Makau for the applicant (1st interested party), and Manthi Masika, for the 2nd interested party, filed written submission.

I have considered the application, documents filed and submissions on both sides.

Contempt proceedings are in the nature of criminal proceedings. The contemnor might end up being put in prison.

An applicant seeking for committal of another for contempt by disobedience of court orders, has a burden to demonstrate to the court the orders which were violated, and how and to what extent they were so violated by the contemnor. The orders of maintenance of status quo can mean different things in different situations. If parties are not on the land, status quo means that they should not go onto and occupy the land. If they are on the land, it means that they should continue being on the land. If they are using the land, it means that they should continue so to use the land. The present applicant seeking committal for contempt has not provided me with an extract of the court order for maintenance of the status quo, nor has he given an interpretation of what it prohibited, that the 2nd interested party has violated.

The consequence is that default by the applicant means that he has not proved a case for contempt justifying committal of the 2nd interested party to prison for contempt of court.

I therefore, dismiss the application for contempt with costs to the 2nd interested party.

It is so ordered.

Dated and delivered at Machakos this **19th** day of **June** 2012.

George Dulu

Judge

In presence of:-

Ms. Thiongo for 1st interested party/applicant

George Sila Kanyole 2nd interested party present in person

N/A – Counsel for Petitioner