



IN THE MATTER OF AN APPLICATION FOR COMMITTAL FOR CONTEMPT OF COURT

AND

IN THE MATTER OF THE JUDICATURE ACT, SECTION 5(1) (CAP 8) LAWS OF KENYA

AND

**IN THE MATTER OF DISOBEDIENCE OF A COURT ORDER DATED 29TH OF MARCH, 2011
ISSUED IN MILIMANI CMCC NO. 7032 OF 2010**

AND

IN THE MATTER OF AN APPLICATION

BETWEEN

GERALD NDIRANGU

KARIUKI.....APPLICANT

VERSUS

PETER NG'ANG'A

CHEGE.....RESPONDENT

RULING

The applicant has filed a Notice of Motion dated 20/4/2011 under section 5 of the Judicature Act (Cap 8) Laws of Kenya seeking the following orders;

1. That the respondent be personally present during the hearing of this Notice of Motion as by law envisaged.
2. That the respondent be declared and found to be contempt of Court for having blatantly disobeyed the Order dated 29th March, 2011 issued in Milimani CMCC No. 7032 of 2010, and such find be imposed or appropriate sanction be imposed upon the respondent on account of being in contempt of Court as the Court may deem fit.
3. That any further or other orders as this Honorable Court may deem appropriate.
4. That costs of the application.

The application is supported on the following grounds;

- i. That leave to file this application was granted on the 15th April, 2011.

- ii. That Milimani CMCC No. 7032 between the parties herein has not been heard and determined.
- iii. That the learned Magistrate in the said suit issued a Court order dated 29th March 2011 which Court Order restrains the parties herein whether by themselves or through their servants, workmen or agents from doing anything to add or waste the ground which each claims to be his, on parcels of land known as plot No. 244 and plot No. 245 Kariobangi South Jua Kali Industries (sector B) Nairobi Pending the hearing and determination of the main suit.
- iv. That the respondent herein is aware of the aforesaid order having been served with the same.
- v. That the Respondent herein has continued to carry out construction works on the disputed parcels of land in blatant contempt of the existing Court order, in the process of which he is bringing down structures that the applicant had erected on the subject lands.

The application is supported by the supporting affidavit of Gerald Ndirangu Kariuki dated 15/4/2011. This is what he depones in brief; that he is the plaintiff in Milimani CMCC No. 7032 of 2010 which suit involves the parties herein, with the respondent as the defendant. That the subject matter in Milimani CMCC No. 7032 of 2010 are plot numbers 243, 244 and 245 (Kariobangi South Jua Kali Industries (Section B)). That the respondent owns plot numbers 243 while he owns plot numbers 244 and 245. That the dispute between the parties is in regard to the physical extent of plots number 244 and 245 vis a vis plot No. 243 on the ground. That he developed plot Number 244 and 245 as one unit and they are adjacent to plot No. 243. That the Court order dated 29th March 2011 in CMCC No. 7032 of 2010 restrains both parties from doing anything to add or waste the ground which each claims to be his on parcel of land known as plot no. 244 and plot no. 245 Kariobangi South Jua Kali Industries. That the respondent is in contempt of this order of the subordinate Court as he still continues to encroach on the said parcels of land and developing the same despite service of the order in question. That the respondent is blatantly disobeying the Court Order by continuing to carry out constructions works on the said land as he demolishes his building that he had erected. That the respondent should be cited for contempt in order to preserve and safeguard Court Orders and their dignity.

The respondent Peter Ng'ang'a Chege filed a replying affidavit dated 1/7/2011. He depones that the Notice of Motion application has no merit, it is slanderous and vexatious and is an abuse of the Court process. That he has not and shall never disobey the Court Order dated 29th March 2011 as alleged by the applicant. He denied that he has never and none of his servants/agents have ever done anything to add or waste the ground on plot Nos. 244 and 245 Kariobangi South Jua Kali Industries (Sector B). That he is the legal owner of the parcel of land known as plot No. 243 which borders plot no. 244 and 241. That on this plot no. 243 he constructed a motor vehicle garage and sale yard which he completed in the year 2010. That him and his family have been earning their livelihood from the business they have been conducting on the said plot no. 243. That the structures built and constructed on plot no. 243 did not and have not in any way interfered with the ground on plot No. 244 and 245. That he has never demolished any property or building on plot Nos. 244 or 245 as alleged by the applicant or at all. That the Notice of Motion application by the applicant is an abuse of the Court process and must be dismissed with costs.

Counsel for the parties filed written submissions. I have read and considered. The applicant cited the case of **Gatharia K. Mutitika & 2 others –vs- Baharini Farm Ltd, Civil Appeal No. 24 of 1985** where the Court of Appeal held that “in all cases of alleged contempt, the breach of which alleged contemnor is cited, must not only be precisely defined, but on as high also proved to a standard which is higher than proof on a balance of probabilities as proof beyond reasonable doubt”. The respondent too relied on the same case. On personal service the applicant cited the case of “**Ochino & Another –vs- Okombo & Others (1989) 165**”. The applicant reiterated the facts as deponed in the applicant affidavit in their submissions in Court.

- i. Their issue is whether the respondent is in contempt of the court order dated the 29th of March 2011 issued in CMCC No. 7032 of 2010. The applicant alleges that after the order was given the respondent has continued to carry out construction works on the disputed parcels of land in blatant contempt of the existing Court order and is in the process of which he is bringing down structures that the applicant had

erected on the subject land. The respondent denies the said averments and states that he is the legal owner of plot no. 243, he has structures built in the said plot and he has not interfered with plot no. 244 and 245 neither has he demolished any property in applicants two plots.

In the applicant's supporting affidavit he states that he has developed plots no. 244 and 245 as one unit and that there are adjacent to plot no. 243. At paragraph 5 he states that the dispute was between the parties in regard to the physical extent of plots no. 244 and 245 vis a vis plot no. 243. At paragraph's 7 he cites the Court order that both parties were restrained from doing anything to add or waste the ground which each claims to be his on parcel of lands known as plots 244 and 245. At paragraphs 8 and 9 the applicant states that the respondent is in contempt of the order as he continues to encroach on the said parcels of land and developing the same as he demolishes his buildings that he has erected despite the court order. This the respondent denies at paragraph 10. The issue is has the applicant proved that the respondent has interfered with plots no. 244 and 245 as alleged and is therefore in contempt of the Court order. I find he has not. The respondent's claims he has not done anything of the things alleged. There was no response to the respondents replying affidavit on what the respondent deponed that he is in his plot not the applicants. The applicant has failed to show that the respondent or his agents have done anything to add or waste the grounds on these 2 plots. The applicant has not shown that a surveyor was taken to the plot to determine physical extent of the plots so as to enable the Court determine that the respondent is constructing on the 2 plots. I agree with the respondents that the applicant has not proved with any definite precision the allegation that the respondent disobeyed the Court order of 29th March 2011. I find no merit in the application and I dismiss it with costs to the respondent.

Orders accordingly

Dated and delivered this 29th day of August, 2012.

R. OUGO

JUDGE

In the Presence of:-

..... For the Applicant
..... For the Respondent

..... Court Clerk