



REPUBLIC OF KENYA

High Court at Meru

Environmental & Land Case 87 of 2003

KIRIGIA KIARUNYI.....APPLICANT

**VERSUS
DORIS CIOMBAKA IMATHIU**

KABURU JAPHET IMATHIU

MWITI JAPHET IMATHIU.....RESPONDENTS

RULING

The application herein is dated 8th October, 2012. It is under a Certificate of Urgency. The application was certified urgent by the Hon. J. A. Makau, J, on 10.10.2012. The application was fixed for Inter Partes hearing on 24.10.2012. On 24.10.2012, the plaintiff was granted leave to file a supplementary affidavit. The court directed that the application be heard on 4.12.2012. The plaintiff was represented by an advocate in court.

On 4.12.2012, M/s Ntarangwi, for the Defendants/Respondents was in court ready for the hearing of the application. The advocate for the applicant was absent.

Mrs Ntarangwi told the Court that issues relating to this matter had not been heard in Court many times following delays occasioned by the applicant. According to

her, it was clear that the plaintiff/Applicant did not have the intention of having the merits of this case heard and determined. Hence the employment of tricks to have the hearing and determination of the case delayed.

Mrs Ntarangwi informed the Court that Hon. Justice J. A. Makau, J, had on 7th June, 2012 given Orders Inter alia:

1. That the injunction orders issued in December 2010 having expired, the plaintiff be and is hereby given up to 30th August, 2012 to vacate the suit land.
2. That the Plaintiff should not continue to use the land until the hearing and determination of the case.

This application, inter alia, sought the following orders (not in numerical Order):

1. That the honourable Court be pleased to issue an order that the defendants, Doris Ciombaka Imathiu, Kaburu Japhet Imathiu and Mwitii Japhet Imathiu be detained in prison for a term not exceeding six months for disobeying a Court Order.

1. That the order be served upon the OCS, Mutunguu Police Station for compliance.

The application dated 8th of October 2012 gave the following grounds as justification:

1. That the defendants have disobeyed the the Court order of interlocutory injunction issued on 4th February, 2011.
2. That the defendants have entered and started committing waste on land parcel number Mitunguu/128 and therefore this application warrants expeditious hearing to curb further wastage.
3. That the plaintiff is suffering immense prejudice as he had prepared his land in readiness for the planting season only for the defendant to come and commit waste on the land.

Mrs Ntarangwi relied on the affidavit of Doris Ciombaka, the first Defendant/Respondent to demonstrate what she called “delaying tactics” by the Plaintiff/Applicant. She also relied on the same affidavit to show that her clients were not in contempt of any Court Orders as the Orders dated 3rd December, 2010 and issued on 4th February, 2011 had expired. Upon their expiry, the Hon. Justice J. A. Makau had issued the Orders she had alluded to earlier.

The issues to be determined are:

1. Were there extant Court orders as claimed in this application?
2. Were the defendants in contempt of the said orders?
3. Did the plaintiff fail to prosecute this application therefore warranting the dismissal?

I find that in accordance with the Orders issued by Hon. Justice J. A. Makau on 7th June, 2012, there are no extant Court Orders capable of being disobeyed. I therefore

find that the defendants are not in contempt of Court.

I do not find it necessary to delve into the issue of the applicants' alleged delays in the hearing and determination of the suit herein save to say that from the time the plaintiff obtained an Interlocutory Injunction on 3rd December 2010, there were many delays in the hearing and determination of issues in this suit apparently at the instigation of the plaintiff. The interest of Justice requires that this suit be heard and determined on its merits. Indeed the overriding objective of the Environment and Land Court Act is to enable the Court to facilitate the just, expeditious, proportionate and accessible resolution of disputes. This court is established by Section 4 of the Act.

It is ordered:

1. That prayer 2, 3 and 4 of the application dated 8th day of October, 2012 be denied.
2. That Costs be in the cause.

Dated at Meru this 20th day of December 2012.

P. M. NJOROGE
JUDGE

Coram:

Mutuma for applicant

Mrs Ntarangwi/absent

Cc Mwonjaru.Mutinda

Ruling was read, Signed and delivered in open Court This 20th day of December 2012

P. M. NJORGE
JUDGE