



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Suit 1636 of 1996

GEORGE WAWERU NJUGUNA.....PLAINTIFF

VERSUS

STEPHEN GITUA KAMUYU.....DEFENDANT

RULING

1. Before me is a notice of Motion dated the 27/2/12 brought by the plaintiff/applicant against the defendant/respondent. The plaintiff in his application is seeking orders to have the defendant/respondent committed to civil jail for a period of six months or such other period for failure to obey the Courts lawful orders and that costs be provided for.
2. The application is premised on the ground that there is a lawful judgment of this Court dated 25/9/98. That the defendant is flagrantly disobeying despite notice.
3. The application is supported by the plaintiff's affidavit dated 27/2/12. He avers that in the year 1996 he filed this suit to enforce his proprietary rights over land parcel escarpment/ Kinari/Block 1/1440. That on the 25/9/98 Hon. J Githinji struck off the defendants defence and entered judgment in his favour and ordered the defendant not to interference with his proprietary interest or trespass on land parcel Escarpment/Kinari/Block 1/1440. That the said order and notice of penal consequences was duly served on the defendant. That his advocate has severally written to the defendant to desist but he has refused to obey the Court orders and that the defendant should be punished for disobedience of the Court order and ordered to be evicted from his land.
4. The defendant filed a replying affidavit dated 9/5/12. He avers that he was not served with the alleged order and notice of penal consequences as stated by the plaintiff/affidavit. That the judgment the plaintiff is relying on was obtained 16 years ago and cannot be enforce as it is execution is time barred as per the provisions of the Limitation of Actions Act Cap 22. That he has made an application to have the said judgment set aside reviewed as the Commissioner of Land has questioned the said title.
5. Counsels made oral submissions at the hearing of this application. I have considered the said submissions made and the applicants filed. I find as follows, there is no proof by the applicant that the order and the Penal Notice was served on the respondent. Merely stating that the defendant was aware of the orders is not sufficient. Service has to be proved (see *Jacob -2 Ochino and another Vs. George Aura Okembo and 4 others C. A No. 36 of 1989*). Secondly I note that the actual disobedience by the defendant is not expressly stated. The affidavit should have specially described their disobedience by the defendant when it was and how he is in disobedience. I there find no merit in this application and I dismiss it with costs to the defendant.

Orders accordingly.

Dated, signed and delivered this 10th day December of 2012

R. OUGO

JUDGE

In the Presence of:-

.....For the Plaintiff/Applicant

.....For the Defendant/Respondent

..... Court Clerk