

Consequently, the 1st Defendant was opposing the injunction application on the basis that the parcel belonged to him and the deceased. He filed a defence along the same lines.

On 14th February 2007 the Defendants filed a chamber application under Order 39 rule 1(a) of the Civil Procedure Rules seeking a temporary injunction to restrain the Respondent and all those acting under him from trespassing on the parcels, grazing and cultivating thereon, or committing any acts of wastage in regard to them. The allegation was that the Respondent was committing these acts on the parcels. The application went before Justice Khaminwa who certified it as urgent and asked that it be served and heard *inter partes* on 6th July 2007. When the day came, the application was heard and granted. The order was extracted and served on the Respondent. On the basis that the order had been disobeyed, the 1st Defendant did on 20th February 2008 file a motion seeking the committal of the Respondent. The judge heard the application and found the Respondent to be in contempt. She ordered his imprisonment for six months.

The present application alleges that the Respondent has continued to disobey the order even after the punishment above. It is being sought that he be committed once more. It should be noted that the 1st Defendant has since died and that is why the legal representative of his estate is the one complaining. He is the Applicant. He was represented by Mr. Okwaro during the application. The Respondent was not represented. He opposed the application by insisting that the suit parcels are his and that is why he is on them.

The order that was extracted and served on the Respondent on 3rd July 2007 was the basis of the contempt application that was heard and determined. Ideally, that service was spent and should not be the basis of the present application. However, it is common ground that the Respondent is still aware of the order not to interfere with the suit parcels. He is therefore under unqualified obligation to obey it until it has been varied or discharged, and it does not matter that he thinks that the order is null, irregular or void. (*HADKINSON –V- HADKINSON [1952] 2 ALL ER 567*).

But, the court should guard against the abuse of its process. The Defendants do not have a suit or counterclaim against the Respondent and had no basis to seek or obtain an order of injunction against the Respondents. I say this with tremendous respect to the court that heard the application and granted it.

Despite this, however, there is an order which the Respondent continues to disobey. He continues to lay claim to the parcels and this is the reason for the disobedience. He says his children are seeking to protect the parcels against the intrusion by the Defendants. I find that the Respondent is technically guilty of the contempt of the order, but, given the history of the dispute as shown above and the fact that the matter is yearning for expeditious disposal so that the parties can move on, the punishment that commends to me is an absolute discharge. I ask that the Respondent pays the costs of this application.

DATED AND SIGNED AT BUNGOMA THIS 28TH DAY OF SEPTEMBER 2011

A.O. MUCHELULE
J U D G E

DELIVERED AND SIGNED AT EMBU THIS 19TH DAY OF OCTOBER 2011
H.ONG'UDI
J U D G E