



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Miscellaneous Civil Application 199 of 2008**

**WANGARE ENOLE KENKE.....APPLICANT**  
**VERSUS**  
**CHIEF LAND REGISTRAR.....1<sup>ST</sup> RESPONDENT**  
**THE LAND ADJUDICATION OFFICER NAROK...2<sup>ND</sup> RESPONDENT**  
**AND**  
**KISAIKA OLE RORAT &**  
**PASIO ONOLE RORAT.....INTERESTED PARTIES**

**RULING**

According to the extracted order, this court, Emukule J. sitting at Nairobi granted the following orders in this matter on 20<sup>th</sup> March, 2007:

“ 1. THAT, the application be and is hereby certified as urgent.

2. THAT, leave be and is hereby granted to the Applicant to institute Judicial Review Proceedings in the nature of

- i) Prohibition to prohibit the Respondent from registering the Interested Party (sic) as the proprietor of Parcel No.525 Olorropil Adjudication Section, Narok District or issuing title documents in their name
- ii) Mandamus to compel the Land Adjudication Officer, Narok to hear and determine the Dispute between the Applicant and the Interested Parties Adjudication Section, Narok (sic) in respect of plot No.525 Olorropil

3. ....

4. THAT leave granted do operate as a stay pending the hearing and determination of the main motion.”

The applicant has now moved this court by summons dated 30<sup>th</sup> July, 2007 alleging that in disobedience of the foregoing order, the 1<sup>st</sup> respondent proceeded to register the Interested Parties as the proprietors of Parcel No.525 Olorropil which registration has rendered the applicant’s Judicial Review application nugatory. She therefore seeks that the 1<sup>st</sup> respondent be punished for contempt of court.

The respondents have filed grounds of opposition in response.

I have not been able to trace any reply by the interested parties although their counsel has filed skeleton arguments. In the 1<sup>st</sup> respondent’s response, it is averred that the order allegedly breached has not been annexed to the application; that the application is incompetent as drawn.

In the written submissions, it is the 1<sup>st</sup> respondent’s contention that:

- i) no notice of intention to lodge the application for leave was issued to the Attorney General.
- ii) no evidence has been tendered to show that the 1<sup>st</sup> respondent was personally served with the order in question.
- iii) the order in question did not have a penal notice.

iv) the prayer for leave to seek “*notification of the interested parties registration as proprietors of plot*”

No.525 – Olorropil Adjudication Section, Narok as having been obtained in defiance of a court order” is not available in a contempt of court proceedings.

In support of the foregoing, the 1<sup>st</sup> respondent’s counsel has cited authorities which I will shortly be making reference to.

The interested parties’ skeleton submissions are to the effect that the order alleged to have been disobeyed by the 1<sup>st</sup> respondent was vague as it did not require the 1<sup>st</sup> respondent to refrain from doing something; that the penal notice was not in accordance with the law. The interested parties’ counsel has also cited authorities.

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I have carefully considered the application and the foregoing submissions.

I have, at the beginning of this ruling, set out the order purported to have been violated by the 1<sup>st</sup> respondent. But to emphasis the point, I reproduce, once more, the relevant part as follows:

“4. THAT, leave granted do operate as a stay pending the hearing and determination of the main motion.”  
(Emphases mine)

I may add here that the prayer in the chambers summons dated 19<sup>th</sup> March, 2007 was to the effect that:  
“c). THAT the grant of leave herein sought to operate as stay of registration process in respect of plot No.525 Olorropil Adjudication Section.”

(Emphasis supplied)

The court (Emukule, J) in granting the above prayer ordered that:

“ (4) Leave granted to operate as a stay  
pending hearing and determination of  
the main motion.”

This is the order that was extracted and presumable served.

The question is whether the order as framed was capable of being obeyed. The interested parties and the respondents have challenged this application mainly on the procedure. Before I consider those grounds, what does the application before me seek? It is framed thus with regard to the issue of contempt.

“ ii) THAT this Honourable court be pleased  
to grant leave to the Applicant to commence contempt proceedings against the Chief Land Registrar.”

It has now been settled that, by dint of section 5 of the Judicature Act, this court and the Court of Appeal in Kenya exercise the same power to punish for contempt of court as that exercised (for the time being) by the High Court of Justice in England. It may be clarified here that the High Court of Justice in England, is that court comprising three (3) divisions of the High court – the Chancery, the Queens Bench and the Family Division.

The jurisdiction of the High Court of Justice in England in matters of contempt of court is provided for in the Rules of the Supreme Court. Order 52 rule 2 of those rules provides an elaborate procedure for the institution and prosecution of contempt of court application. It stipulates as follows:

“2 (1) No application to a Divisional Court for an  
order of committal against any person may  
be made unless leave to make such an  
application has been granted in accordance  
with this rule.

(2) An application for such leave must be made  
ex parte to a Divisional Court, except in  
vacation when in may be made to a judge in

chambers and must be supported by a

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statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought and by an

affidavit, to be filed before the application is made, verifying the facts relied on.

3) The applicant must give notice of the application for leave not later than the preceding day to the Crown Office and must at the same time lodge in that office copies of the statement and affidavit.

4) Where an application for leave under this rule is refused by a judge in chambers, the applicant may make fresh application for such leave to a Divisional Court.

5) An application made to a Divisional Court by virtue of paragraph (4) must be made within 8 days after the Judge's refusal to give leave, or if a Divisional Court does not sit within that period, on the first day on which it sits thereafter”

Rule 3 of Order 52 goes on to state:

“3 (1) When leave has been granted under rule 2 to apply for an order of committal, the application for the order must be made by motion to a Divisional Court and, unless the court or judge granting leave has otherwise

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directed, there must be at least 8 clear days between the service of the notice of motion and the day named therein for the hearing

2) Unless within 14 days after such leave was granted, the motion is entered for hearing, the leave shall lapse.

3) Subject to paragraph (4) the notice of motion, accompanied by a copy of the statement and affidavit in support of the application for leave under rule 2, must be served personally on the person sought to be committed.

(4) Without prejudice to the powers of the court or judge, under Order 65 rule 4, the court or judge may dispense with service of the notice of motion under this rule if it or he thinks it just to do.”

The application before me is dated 30<sup>th</sup> July, 2007 and is by way of chamber summons. It seeks in the main leave to commence contempt of court proceedings against the 1<sup>st</sup> respondent, the Chief Land Registrar.

That application was, on 31<sup>st</sup> July, 2007 placed before Nyamu, J (as he then was) who declined to grant leave stating as follows:

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“As the application has not been served on the AG, I cannot grant leave but I certify it as urgent for *inter partes* hearing after service on 8/8/2007 at 9.00 before the vacation judge.”

Subsequently, the parties were directed to file written submissions on the application for leave. All this is not provided for in the rules set out in the previous paragraph. I wish to note only two things.

First, there was no service on the Attorney General before the application for leave was brought. Under rule 2 sub-rule (3) reproduced earlier, it is stated, in mandatory language, that notice of the application for leave be given to the Crown Office not later than the preceding day. What appears to have been served was a notice to the Registrar of the High Court. There is no such requirement. It is settled that the equivalent of the Crown Office in Kenya is the Office of the Attorney General. See Hon. Mwangi Kiunjuri Vs. Wangethi Mwangi, HCCC No.1833/03.

The second point is to do with the proceedings before Nyamu, J on 31<sup>st</sup> July, 2007. The judge having declined to grant leave, in terms of Rule 2(3) aforesaid, a fresh application ought to have been made, presumably by a motion.

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In other words, there is no application before me to consider whether or not there was disobedience of the court order.

For the reasons stated above, the application is dismissed with costs.

Dated, Signed and Delivered at Nakuru this 15<sup>th</sup> day of January, 2010.

**W. OUKO**  
**JUDGE**