



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

Miscellaneous Application 103 of 2003

REPUBLIC APPLICANT

VERSUS

THE CHIEF LAND REGISTRAR

THE DISTRICT LAND REGISTRAR, RESPONDENTS

TRANS-MARA

A N D

EX-PARTE

1. MOSES LAMASHON KORINK

2. SIMON LEPARAIKO TIEPO

3. DAVID NTUKAI

4. SAMSON KELIAN

5. SAMWEL M. NAIDUYA

6. JACKTON KUROMONGI (AND 428 OTHERS)

R U L I N G

The exparte applicants (herein after referred to as Applicants) filed the application dated 21st May, 2009 seeking orders to cite the Respondents for contempt of court. The said contempt is that the respondents have breached and/or disregarded the terms of the order of this Honourable court issued on 4th June, 2004. The applicants are also seeking orders to commit the respondents to jail for a period not exceeding six (6) months or in the alternative an order of sequestration to attach and sale the respondents properties to defray the damages occasioned by and/or arising out of the breach or disobedience of the court order. The application is brought under section 5 of the Judicature Act (Cap 8 Laws of Kenya). Leave to institute the contempt proceedings was granted by this court on 20th May, 2009.

The brief background of the matter is that on the 4th of June, 2004 Hon. Justice G. B. M. Kariuki issued

an order of certiorari and quashed the Chief Land Registrar's Gazette Notice dated 25th July, 2003 relating to parcels numbers SHARTUKA/512 - 514, 516, 518 - 524, 545 - 569, 570, 571, 573 - 593, 595 - 611, 620 - 639, 641- 674, 676 - 693, 695, 700 - 714, 717, 719 - 739, 743 - 744, 746, 748, 753 - 759, 762 - 771, 774 - 787, 789, 791, 792, 794, 818 - 821, 823, 824, 826 - 835, 838, 852 - 54, 857 - 859, 17, 18, 26, 29, 36, 45, 63, 85, 92, 103, 111, 112, 117, 126, 127, 130, 147, 149, 155, 180, 182, 206, 213, 221, 223, 240, 251, 254, 258, 297, 319, 316, 332, 320, 370, 369, 368, 356, 362, 350, 388 - 400, 386, 385, 372 - 382, 401- 407, 409, 411 - 416, 418 - 511.

The applicants herein duly extracted the order on 4th June, 2008 and as a result of the said order the applicants' registration was not interfered with. The order was duly served upon the two respondents, namely the Chief Land Registrar and the District Land Registrar, Trans-Mara District. Despite the service of the order, the two respondents have ignored the order and have since commenced re-registration of the applicants' properties. It is on the basis of the above scenario that the applicants are seeking this court's intervention and have the respondents cited for contempt.

The main issues to be determined herein are:

- i. Whether indeed this Honourable Court issued a Court Order on 4th June, 2004*
- ii. Whether the Court Order was extracted and the same contained a Penal Notice*
- iii. Whether the said court order was personally served on the respondents.*
- iv. Whether the respondents have actually disobeyed the court order.*

On the first issue, I have perused the court record and I am fully satisfied that Hon. Justice G. B. M. Kariuki did issue an order of Certiorari on 4th June, 2004 quashing the 1st respondent's Gazette Notice dated 25th July 2003. An attempt was made to have the court order reviewed but the same was not granted. I therefore find that a court order was issued by this Honourable Court on 4th June, 2004 and the same is still in force.

Regarding the second issue as to whether the order was extracted and whether the same contained a Penal notice, I have seen the original order extracted on 22nd June, 2004 which was an extract of the ruling read on 4th June, 2004. The applicants subsequently extracted another order on 4th June, 2008. The said order has been attached as annexure MLK 7 in the affidavit of **MOSES LEMASHON KORINKO**. The extracted order has a Penal notice at the bottom. I therefore find that a proper order was extracted and the same did contain a Penal Notice in the following words:-

“TAKE NOTICE THAT, if you, THE CHIEF LAND REGISTRAR & THE LAND REGISTRAR, TRANS-MARA and/or any other person affected by this order, either by yourselves, Agents, Servants and/or Employees or any other person acting by your authority, disobey the Court Order herein, you shall be cited for contempt of Court and/or disobedience of a Court Order and shall be liable to committal to jail for a term not exceeding Six months and/or have your properties sequestered.”

For this court to cite any party for contempt of court, the order allegedly being breached must have been personally served upon those to be cited. The applicants have annexed two affidavits of service by two different process servers. Annexure MLK 8(a) is the Affidavit of Service of PATRICK O. MURUKU sworn on the 20th March 2009. The process server has deponed that on 23rd June, 2008 at about 11.15 a.m. he served the 1st respondent with the court order at the Ministry of Lands Headquarters along 1st Ngong Road Avenue. The name of the Chief Land Registrar served is one Mrs. T. N. Mburu. Similarly, annexure MLK 8(b) is an affidavit of **DAVID OKUMU OJILL**, a licenced process server who served the 2nd respondent with the court order on 19th June 2008 at 10.15 a.m. at Kilgoris Town in Trans-Mara District. The name of the Land Registrar served personally is one **ALOICE KOMULO**.

Having read the two affidavits of the process server, I am satisfied that the two respondents were personally served with the court order.

Lastly, this court has to be satisfied that the respondents have indeed breached the terms of the Court Order. The applicants have submitted that the respondents have started re-registering their properties yet they do hold title deeds. Annexure MLK 4 is a letter dated 30th April, 2009 by the 1st respondent addressed to the 2nd respondent. The letter is signed by the 1st respondent personally and it's the same person, T. N. Mburu, who was served with the order of the court on 23rd June, 2008. The contents of the letter dated 30th April, 2009 is to the effect that the applicants' property known as Shartuka Group Ranch was affected by a court of Appeal order. The Chief Land Registrar also refers to his letter dated 4th August, 2004. The 1st respondent is instructing the 2nd respondent to collect from his office an Area list for 763 Parcels and a Registry Index map sheets for purposes of **registration**. It is clear from the annexures of the applicant's application that the Court of Appeal issued a temporary order on 15th September, 1998 in Civil Application No. 195 of 1998. This order emanated from a decision of Hon. Justice Wambilyangah dated 15th July, 1998. This order was granted pending Appeal. However, the Appeal itself was struck out on 11th July, 2000, vide Civil Appeal No. 237 of 1998. A further application for contempt of the temporary order granted pending the hearing of the Appeal was also struck out by the Court of Appeal.

It is clear that the first respondent's reference to the order of the court of Appeal is not representing the correct position unless there is a different order from the Court of Appeal, I am convinced that there is no order directing the respondents to re-register the suit property.

It is therefore my finding that the respondents, being aware of the order of this court issued on 4th June, 2004, have breached and/or disobeyed the same. The purported registration of the suit property is in contravention of the court order as the properties are already registered in the names of the applicants. I am further convinced that the respondents are fully aware of the order of this court as a Notice of Appeal was duly filed on 23rd February 2006 by the Attorney General on behalf of the two respondents. This Notice is in respect of the decision of this court.

The Respondents, having been duly served with the order of this court have decided to turn a blind eye to the same. They were duly served with the current application but have decided not to attend court presumably in the hope that this court will not take any action against them. I am satisfied that the respondents are in contempt of court for breaching and/or disobeying the order granted by this court on 4th June, 2004 and I do proceed to cite them accordingly.

Since the contemnors have not been participating in these proceedings, I hereby order that notice to show cause why the respondents should not be punished for the contempt be issued and served upon them personally. This matter is listed for further orders on 21st July, 2009.

Delivered, dated and signed at Kakamega this 24th day of June, 2009.

SAID J. CHITEMBWE

J U D G E