



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 1203 of 2004

GATUANYAGA DAIRY FARM CO. LTD.....1ST
PLAINTIFF

JOEL MUCHAKAI CHEGE.....2ND
PLAINTIFF

JOHN KANDUTHU NDEGWA.....3RD
PLAINTIFF

VERSUS

MICHAEL KUNGU (CHAIRMAN THIKA GATUNDU

GATUANYAGA RESIDENT WELFARE SELF GROUP.....1ST
DEFENDANT

MUNCIPAL COUNCIL OF THIKA.....2ND
DEFENDANT

DR. NJONGE (COMMITTEE CHAIRMAN-

MOUNTAIN VIEW PRIMARY SCHOOL).....3RD
DEFENDANT

CHIEF LANDS REGISTRAR.....4TH
DEFENDANT

RULING

The facts that gave rise to this suit as gathered from affidavit evidence may briefly be stated. The plaintiffs filed a suit by way of a plaint dated 2nd December 2004 seeking a permanent injunction to restrain the defendants either by themselves, their agents employees, servants or otherwise whatsoever from alienating trespassing encroaching upon or in any manner dealing with the subject matter of the suit

being LR No. THIKA MUN/BLOCK 21 GATUANYAGA) 2008 and LR No 7240/1 or any part thereof excepting only portions transferred to the defendant or any of them if any by the 1st plaintiff. The plaintiffs also sought costs of the suit and any other or further relief this honourable court may deem fit and just to grant.

The defendants upon being served with summons filed defences as well as counterclaims.

On 8th June 2005 the parties appeared before Ransley J and recorded a consent order agreeing to maintain status quo. The status quo as at that time was that no construction had been commenced by the defendants and further the plaintiffs stopped their own construction in strict adherence to the court order.

On or about the month of March 2007 the defendant disregarding the said consent order commenced constructing a primary school on the suit premises.

This prompted the plaintiffs to file the Chamber Summons seeking orders to commit the 1st Defendant to civil jail for a term not exceeding six months.

When this Chamber Summons came up for hearing Mr. Kahonge counsel for the defendant raised a preliminary objection on the ground that the application for contempt proceedings as drawn and filed is incompetent and/or bad in law for want of compliance with mandatory laws governing contempt proceeding and the same ought to be struck out., There was no formal order extracted and secondly the alleged order was not served on the contemnor personally accompanied with penal notice.

Miss Kiniti for the applicant in opposing the Preliminary Objection conceded that she had not extracted the order but submitted that the respondent was present in court and the order was recorded by consent. She further submitted that because the respondent was present in court and was aware of the order there was no need to extract and serve the order. With due respect to counsel even if the respondent was in court when the order was made she ought to have extracted a formal order and b e personally served upon the Respondent endorsed with penal consequences

In the case of NYAMODI OCHIENG & another V. K P & T CORP CA No. 264 of 1993 (unreported the Court of Appeal emphasized that order must be personally served and endorsed with penal consequences. Further leave was required to commence these contempt proceedings.

For the reasons stated above the preliminary objection is upheld and it follows therefore that the Chamber Summons dated 11th July 2007 fails and is struck out with costs.

Dated and delivered at Nairobi this 27th day of February 2008.

J. L. A. OSIEMO

JUDGE