



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 164 of 2007

1. Land and Environmental Law
2. Subject of the main suit land
3. Civil Practice and Procedure

I: Contempt proceeding

a) Issue in question is the defendant the one and same person who is the 3rd defendant.

4. Advocate for the plaintiff – bring witness and states he is

5. Advocate for the plaintiff – states he is not the one.

6. Held: That the said John is the one and same person as John Kiarie

7. Case law – nil

8. Advocates

W.G. Kilonzo for Kilonzo & Co. Advocates for the plaintiff/applicant – present

S.K. Gichuki for Kamungi Gichigi & Burugu Advocates for the interested party-present

CHARLES NGALAKA MULINGE & 3 OTHERS.....PLAINTIFFS

VERSUS

TAWHEED PROPEPTIES LTD & 5 OTHERS.....DEFENDANTS

RULING

1. Background

1. The application before me concerns contempt proceedings whereby the 3rd defendant are John Kiarie

is stated to have been constructing on the suit premises contrary to the orders of this court issued on the 19 July 2007.

2. There were persons on the ground that was in the process of constructing. When the process server and court Bailiff went on site one John Kiarie stated that he was in possession of the said land and would as such not vacate. He continued to construct through workers on the ground.

3. The said John Kiarie was arrested for contempt and brought to court. He claimed he was NOT JOHN KIAIRE. This court held an enquiry as to whether John Kiarie arrested is thereon and same person as the 3rd defendant and as the one calling himself John Wangongu Ndagwatha now before this court.

4. The OCS who effected arrested stated he did further investigation at the registrar of persons and confirmed that the said person amounted as defendant No.3 in this case was called John Wangongu Ndagwatha.

5. The plaintiff called witnesses who stated that the person in court referring to himself as John Wangongu Ndagwatha admittedly introduced himself to plaintiff No.1 and a law court clerk as John Kiarie. (The other witness had been seated in court during these proceeding and were rejected).

6. The said witness personally identified the defendant No.3 as the John Wangongu Ndagwatha as the defendant No.3.

7. In reply the said John Wangongu Ndagwatha denied being John Kiarie. He produced his extract from the registrar of person. His ID card had been lost. He called a witness who knew him as a fellow businessman and had in effect nothing to do with construction.

II: Finding

8. The said John Wangongu Ndagwatha produced an extract that reflected as father had a name Kiarie. He tried to deny this in the witness box but the document clearly shows the this name John Kiarie may and is an "alia".

9. I accordingly find that John Kiarie is the one and same person as John Wangongu Ndagwatha.

10. He will now face contempt proceeding which he will be given an opportunity to defendant himself.

11. I award costs to the plaintiff/applicant.

Dated this 31st day of July 2007 at Nairobi.

M.A. ANGAWA

JUDGE

W.G. Kilonzo for Kilonzo & Co. Advocates for the plaintiff/applicant – present

S.K. Gichuki for Kamungi Gichigi & Burugu Advocates for the interested party - present