



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 2387 of 1987

COMMISSIONER OF LAND PLAINTIFF

VERSUS

SAMUEL KANOGO RITHO DEFENDANT

RULING

The Applicant seeks an order: -

(1) **THAT** this Honourable Court be pleased to order that the Commissioner of Lands, Mrs. Judith Okungu; the Chief Land Registrar, Mr. C.W. Ngatia; the Land Registrars Kilifi, Mr. A.M. Mgenyi and Mrs. Betty Thoya and the Director of Surveys Mr. Haggai Nyapola be committed to Civil jail for such a period that seems just to This Honourable Court for contempt of Court in disobeying this Honourable Court's order issued on 30th October, 2002 by the Hon. Mr. Justice Ransley and which were served upon them on 9.1.2003 and 13.1.2003 with a penal notice”

The grounds are that an order made by me on the 30.10.2002 was served upon the contemnors together with a penal notice and that the same has been disobeyed in contempt of the said orders.

The particular order relied on by the Applicant, as having been disobeyed is Order 3 and 4, which states:

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“(3) THAT orders be and are hereby issued, directed to the Land Registrar, Kilifi, Chief Land Registrar, Nairobi and Registrar of Titles, Mombasa directing them to cancel all entries including registration of L.R. Watamu/609 Grant No.C.R. 18960 from 22.12.1986 which interfered with the Defendant's freehold ownership of the suit lands L.R. Kilifi/Chembe Kibabamshe/414, 272, 361, 363, 364, 416, 417 and 421; Kilifi/Jimba 388, 431 and 435 and Kilifi/Madeteni 497, 564 and 569.

(4) THAT an order be and is hereby issued directing the Commissioner of Lands the Plaintiff herein and to the Director of Surveys their servants and/or agents ordering them to revoke and cancel all the leases including the lease in respect of L.R. Watamu/609 Grant No.C.R.18960 and all the authenticated survey deed plans including deed plan No.136373 which have been drawn from 28.6.1986 to the date of this judgement in respect of the suit lands and restore the authenticated boundary survey plans which were there before 28.5.1986 and register all the suit lands in the name of the Defendant Samuel Kanogo Ritho.”

In the Supporting Affidavit to the Application Mr. Ritho the Defendant depones at paragraph 4 that the decree was extracted

and served on the following persons:

“THAT I had the decree extracted and served personally upon the Commissioner of Lands, the Chief Land Registrar, Mr. C.W. Ngatia the Land Registrar Kilifi, Mr. A.M. Mgenyi and Mrs. Betty Thoya and the Director of Survey Mr. Haggai Nyipol”

Firstly it is deponed that the officers have completely failed to comply with the said decree.

In a letter of the 4.11.2004 from the Attorney General to the following persons namely Mrs. Judith Okungu the Commissioner of Lands, John Gichuri Gitonga The Land Registrar Kilifi, Director of Survey Ardhi House, Mr. C.W. Ngatia Chief Land Registrar Ardhi House, Ms. Betty Thoya Land Registrar Kilifi, it is stated that their records indicate that the said orders together with the penal notice were served upon their offices together with the Registrar Kilifi on 13.1.2003 and receipt thereof was acknowledged.

In response Mr. Rabala for the Respondents relied on Grounds of Opposition dated the 4.2.2005, which states: -

1. **THAT** the application is bad in law, premature and an abuse of the process of this court.
2. **THAT** the orders are incapable of being implemented
3. **THAT** the alleged contemnors were not party to the proceedings
4. **THAT** the decree is a preliminary one compliance will only increase litigation, as the matters has not been concluded.
5. **THAT** a decree by its nature cannot compel Government Offices to perform their official duties.”

He also relied on two affidavits one by Rufus Karima Kalama, the District land Registrar Kilifi sworn on the 26th January 2005 and another of Elizabeth Thoya, the Land Registrar for both Kilifi and Malindi Districts.

Mr. Kalama swears that he had first come to the Kilifi station and that as there were many cases involving this land then it was not possible for the Government to register all the court orders.

Mrs. Thoya depones that she is not a party to the suit and is not bound by the orders. Further that this suit has not been finalized and any Court Order complied with at this stage (sic) will affect the status of land thereby compounding litigation.

She also states she was not served personally with the Court Order in question.

The Plaintiff filed by the Plaintiff in this suit sought the following orders.

1. A declaration that the suit lands are Government Lands;
2. A declaration that the Plaintiff’s title to the suit lands are defective and void and in law;
3. An order that the defendant surrender the possession of the suit lands to the Plaintiff;

An Amended Defence and Counterclaim was filed on the 20.7.2000.

The Defence alleged that the plaintiff claims had in effect been dealt with by Justice Shields in HCCC Misc. App. of 185 of 1987 a Judicial Review matter in which he quashed the decision of the Land Registrar Kilifi to cancel the Defendant herein as the owner of suit premises. Whether or not that was done. I am not aware. However I found that on the hearing of this suit, which proceeded ex-parte before me that the issues raised by the Plaintiff in this suit were res judicata. To date my orders have not been set aside and must therefore be obeyed.

I will however give the Land Registrar Kilifi a period of six months from today to implement my orders. In that time the application filed to set aside my ex-parte Judgment will be set down for hearing. Depending on that I will hear the application for contempt, which is being adjourned for six months.

Dated and delivered at Nairobi this 29th day of July 2005

P.J. RANSLEY

JUDGE