



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Suit 50 of 1980

MILKA MUGURE GITAU.....PLAINTIFF

VERSUS

GEORGE GITAU.....DEFENDANT

RULING

The plaintiff brought an application under Order XXXIX Rule 2A(2) and 9 and Section 3A of the Civil Procedure Act praying that the following defendant's properties be attached:-

- (i) One half share in Nyandarua/Mumui/3.
- (ii) Nyandarua/Mkungi/655.
- (iii) Nyandarua/Mkungi/658.
- (iv) Other properties in the name of the defendant/respondent.

The reason for the requested attachment was the defendant's disobedience of this court's orders. On 20th January, 1986 the parties entered into a consent whereby they were to share equally the parcels of land registered in the name of the defendant and known as Plot Number 46 Mkungi Settlement Scheme later re-named Nyandarua/Mkungi/46 and Plot Number 149 Mumui Co-operative Society, later known as Nyandarua/Mumui/3. The defendant subdivided without the plaintiff's knowledge Nyandarua/Mkungi/46 into several portions among them Nyandarua/Mkungi 659 which the plaintiff considered to be her rightful share. On the 9th day of June 2004 this court issued an order of injunction restraining the defendant, his servants and/or agents from entering, surveying, sub-dividing and disposing of the parcel of land known as Nyandarua/Mkungi/659. The defendant was aware of the aforesaid court orders. There was also in the title register a caution lodged by the plaintiff and registered on the 3rd May, 1995 but the same was removed unprocedurally.

The defendant had subsequently excised from Nyandarua/Mkungi/659 parcels known as

Nyandarua/Mkungi/2572, Nyandarua/Mkungi 2573 and Nyandarua/Mkungi 2574 and purported to transfer them to third parties.

On 24th May, 2005 this court delivered a ruling in a similar application as the present one but where the plaintiff/applicant prayed for arrest and committal to civil jail of the defendant as well as cancellation of the three aforesaid titles due to the defendant's disobedience of the said court orders. The court granted the said application and ordered the defendant's committal to civil jail for 60 days and cancellation of titles numbers Nyandarua/Mkungi 2572, Nyandarua/Mkungi/2573 and Nyandarua/Mkungi/2574.

The court, having issued the aforesaid orders, can it also proceed to order attachment of the defendants properties as prayed in the said application? Rule 2A(2) of Order XXXIX reads as follows:-

“In cases of disobedience, or of breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release.”

It is therefore clear that where a person disobeys a court order, the court can order attachment of his property as well as his detention in prison as aforesaid. The above demonstrates the seriousness of disobedience of a court order by prescribing what may seem to be double punishment.

In this matter, the court has already established that the defendant breached the aforesaid orders. The respondent has not shown any remorse for his conduct and has even deliberately refused and/or failed to appear before this court and a warrant for his arrest had to be issued and ordered to be executed by the Provincial Criminal Investigation Officer, Rift Valley. In the circumstances, I order immediate attachment of the defendant's one half share in Nyandarua/Mumui/3, Nyandarua/Mkungi/655 and Nyandarua/Mkungi/658. Such attachment shall remain in force until further orders of this court.

The defendant shall bear the costs of this application.

DATED, SIGNED AND DELIVERED at Nakuru this 2nd day of November, 2005.

D. MUSINGA

JUDGE

2/11/2005

Ruling delivered in open court in the presence of Mr. Kagucia for the plaintiff and N/A for the respondent.

D. MUSINGA

JUDGE

2/11/2005