



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MURANG'A

ELC NO. 14 OF 2019

CYRUS MUCEBIU IRUNGU.....PLAINTIFF/RESPONDENT

VERSUS

ALEXANDER MUGAMBI MIRITI.....1ST DEFENDANT/APPLICANT

MUKURA JAMES CHACHA.....2ND DEFENDANT/APPLICANT

LUCY WANJERI CHACHA.....3RD DEFENDANT/APPLICANT

JAMES MWANGI KAMAU.....4TH DEFENDANT/APPLICANT

TERESIA WANGUI NG'ANG'A.....5TH DEFENDANT/APPLICANT

GEORGE KANGATA MWANGI.....6TH DEFENDANT/APPLICANT

ALLAN PETER KARANJA.....7TH DEFENDANT/APPLICANT

THE LAND REGISTRAR, MURANGA.....8TH DEFENDANT/APPLICANT

THE HON ATTORNEY GENERAL.....9TH DEFENDANT/APPLICANT

RULING

1. By a Notice of Motion dated 12/10/2020, the Applicant herein seeks the following Orders against the Respondent:
 - a. The contemnor Cyrus Mucebiu Irungu be cited for contempt of Court for having failed/refused to comply with Court decree issued by the honourable Court to maintenance of status quo in the suit land.
 - b. The contemnor Cyrus Mucebiu Irungu be committed to jail for 6 months or such other period as the Court may deem just and expedient.
 - c. The Court do meet any other punishment against the Defendant for contempt as it may deem fit and expedient for contempt of Court.
 - d. The costs of the Application be borne by the Respondent.
2. The Application is premised on the following grounds;
 - a. This Court ordered that the status quo obtaining in the suit land be maintained pending the hearing and determination of the suit.
 - b. That the Plaintiff has breached the Orders by interfering with the Applicant's quiet possession of the land by harassing the workers employed by the Applicant.
 - c. That the Plaintiff is in contempt of Court by interfering with the Orders of status quo.
3. The Application is supported by the affidavit of Mukura James Chacha who deponed that the Respondent has formed a habit of harassing

his workers and interfering with his quiet enjoyment of the suit premises. That on the 24/9/2020 he went to the land and told his workers namely Onesmus Mutisya John and Ezekiel Wekesa that the land belongs to him and threatened to evict them from the land. That he should be punished for contempt of Court by committal to 6 months in jail.

4. The Application is opposed by the Respondent who states that the Application is incompetent and bad in law. That the Order of status quo were entered by consent of the parties and the occupation of the Applicant of the suit land is subject to the said orders.

5. He denied harassing the workers of the said Applicant or even visiting the land on the 24/9/2020 or such other time. That he did not take any photos of the named employees or the suit land. That on the material date he was at home recuperating as he had been unwell.

6. Further the Applicant's Application is baseless as it is not founded on any cogent evidence and should be dismissed.

7. On the 9/12/2020 the parties argued the Application orally and reiterated the contents of the pleadings before Court.

8. I have seen the Orders of status quo issued by the Court on the 24/7/19 to the effect that the Defendants are restrained from selling, leasing, transferring, developing or charging the suit land pending the hearing and disposal of the suit.

9. Courts punish for contempt to secure and maintain the rule of law and the dignity and authority of the Courts. In the case of **Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828 Ibrahim , J** (as he then was stated:

“It is essential for the maintenance of the rule of law and Order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its Orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an Order is made by a Court of contempt jurisdiction, to obey it unless and until that Order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an Order believes it to be irregular or void”.

10. Judicial power in Kenya vests in the Courts and other tribunals established under the Constitution and that it is a fundamental tenet of the rule of law that Court Orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such Orders as directed to him or them by the Court of law. See **Central Bank of Kenya & Another vs. Retilal Automobiles Limited & Others Civil Application No. Nai.247 of 2006.**

11. The Applicant has averred that the Respondent visited the suit and took pictures and threatened to evict his employees. None of the named employees have given evidence in support of this averment. There is no evidence to show that indeed the Respondent visited the suit land and or disobeyed the status quo Orders.

12. It is trite that contempt is a serious accusation and a person may lose their personal liberty hence the standard of proof is higher than in civil cases but slightly below that required of criminal proceedings.

13. I am not satisfied that the Applicant has proven contempt and or any disobedience of the Status quo Orders subsisting on the suit land.

14. I find that the Application is without merit and I accordingly dismiss it with costs to the Respondents.

15. It is so ordered.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 14TH DAY OF JANUARY 2021

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Ndegwa for the Plaintiff

1st, 2nd & 3rd Defendants: Ben Mwangi HB T M Njoroge

4th & 5th Defendant: Absent

6th Defendant: Mwangi Ben HB T M Njoroge

7th, 8th & 9th Defendant: Absent