



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC MISC CASE NO. 8 OF 2020

FESTUS MURIUNGI KINOTI.....APPLICANT

VERSUS

EVANGELINE NKATHA MUGAMBI.....RESPONDENT

JUDGMENT

1. The applicant Festus Muriungi Mugambi has filed this miscellaneous suit seeking orders to commit the respondent Evangeline Nkatha Mugambi to jail for a period of 6 months for contempt of court. The application is anchored on the provisions of Rule 81.4 of the Civil Procedure (amendment no. 2) Rules, 2012 of England as read with Section 5 of the Judicature Act (Cap 8) Laws of Kenya.

2. The applicant contends that on 6.11.2019, he filed a suit Githongo P.M. ELC No. 34 of 2019 contemporaneously with an application seeking injunctive orders to prevent the respondent from inter-alia; “doing any of the following acts that is to say entering upon or trespassing onto the plaintiff’s compound and/or the suit land, remaining or otherwise howsoever interfering with or chasing away the plaintiff’s workers, servants or agents, *carrying out any activity on the suit land or preventing the plaintiff from user, possession and utilization of the suit land parcel of land number Nkuene/Uruku/2345*”.

3. The applicant avers that on 29.11.2019 orders of status quo were given where the applicant was to continue being in use and possession of the suit land. However, the respondent has defied the said orders. That is why the applicant desires that the respondent be committed to civil jail.

4. In response, Evangeline Nkatha through her Replying affidavit filed in court on 9.11.2020 stated that the status quo ordered by the court meant that she should not be evicted from her home. She avers that on several occasions, the applicant has visited her home where he removed doors and took away 48 bags of fertilizer, 23 bags of cement, 28 pieces of iron sheets, rolls of barbed wire and timber and also blocked the gateway to her house. The respondent reported the matter to the police.

5. I presume that the applicant has invoked this court’s jurisdiction to hear the matter ostensibly because the magistrate’s court has no such jurisdiction.

6. Section 10 of the Magistrate’s Court’s Act empowers the courts to punish for contempt as follows:

“In the case of civil proceedings, the willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court constitutes contempt of court”.

7. Order 40 Rule 3 (1) of the Civil Procedure Rules further provide 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”. Emphasize added.

8. The issue of jurisdiction of magistrates in matters contempt of court is well captured by Judge Onyiego in the case of **ZJA & TA (minors) 2020 eKLR** where he stated as follows:

“Prior to the enactment of the Magistrate’s Court Act no. 46 of 2016, which came into force on 2.1.2016, magistrates had no jurisdiction to punish for contempt save for acts committed on the face of it or disobedience of orders with regard to grant of temporary injunction under order 40 of the Civil Procedure Act....”.

9. Thus the application of order 40 rule 3 has been operational even before the enactment of the Magistrate's Court Act of 2016. Further, the nullification of the Contempt of Court Act did not oust the jurisdiction of the magistrate's courts to deal with disobedience of court orders as stipulated in the provisions of law cited herein.

10. In the circumstances, this court cannot usurp the powers of the trial court to deal with the dispute at hand. I therefore find that this suit has no merits and the same is dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED AT MERU THIS 3RD DAY OF FEBRUARY, 2021

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Judgment was given to the advocates for the parties through a virtual session via Microsoft teams on 18.11.2020. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this Judgment has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the ***Civil Procedure Rules*** which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE