



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO. 1537 of 2013

SUSAN MBEKE KASOMEAPPLICANT

VERSUS

EMBAKASI RANCHING CO. LTD.....RESPONDENT

RULING

1. The Plaintiff /Applicant filed a Notice of Motion dated 18th September 2020 in which she sought the following orders: -

1) Spent

2) That the Defendant its Chairperson, Lucy Nyokabi and Vice Chairman, Walter Kigera be cited for disobeying the Court Decree issued on 27th June 2017 by Hon. Lady Justice L Gacheru.

3) That the Defendant's Chairperson, Lucy Nyokabi and Vice Chairman, Walter Kigera be fined / or committed to jail for at least 6 months for disobeying the Honourable court decree.

4) Spent

5) That the Defendant its Chairperson, Lucy Nyokabi and Vice Chairman, Walter Kigera be restrained from issuing lease for plot number V10022 registered as Block 136/8491 to Joseph Murimi Gaita or to any other person/s pending the determination of this Application.

6) That the OCS, Ruai Police Station and the OCPD Kayole Police Division do assist in effecting Orders to the Defendant its Chairperson, Lucy Nyokabi and Vice Chairman, Walter Kigera.

7) That costs hereof be to the Plaintiff.

2. The Defendant/Respondent which was duly served neither filed grounds of opposition nor a replying affidavit. The Applicant contends that she obtained a Judgement in her favour on 27th September 2016. She extracted a decree which was served upon the Respondent who has refused to comply with the same.

3. The Applicant contends that the Respondent has issued a list which shows that the lessor of Block 105/1556 is Daniel Wataku Njoroge instead of her name. She argues that this is the despite the fact that she has developed the suit property as her home as shown in the annexed photographs. Her plea to the OCS Ruai and OCPD Kayole to assist have not been successful because they are asking for a specific order from the Court which will enable them to act. It is on this basis that the Applicant seeks to have the Chairperson and vice Chairperson of the Respondent committed to civil jail for a period of six months.

4. I have carefully considered the Applicant's application. The only issue for determination is whether the Applicant has demonstrated that the Respondent's chairperson and vice chairperson are guilty of contempt. For one to be found guilty of contempt, it has to be proved that there was a valid order which was given by the court; that the said order was served upon the contemnor or that the contemnor had knowledge of it and that that the contemnor willfully disobeyed the order.

5. In the instant case, there was a judgement given in favour of the Applicant on 27th September 2016. A decree was extracted and issued on 27th June 2017. There is no evidence whether this decree was served upon the Respondent. The decree which was issued was in the following terms: -

“ That a permanent injunction is hereby issued against the Defendant, its agents,servants and /or employees from trespassing into, damaging , or destroying the Developments upon the Plaintiff’s Plot No.V 10022 situated at Ruai within Embakasi Ranching Company Limited Settlement scheme and/ or howsoever interfering with the Plaintiff’s and her agents or her ownership thereof through alienation or disposal or sale”.

6. There was no evidence given of any interference by the Respondent over the suit property. In fact it is clear from the judgement that the Respondent ceased to interfere with the suit property once this case was filed. Whereas the Applicant has indicated that Plot No. V10032 is registered as Block 136/8491 and that it is destined to be registered in the name of Joseph Murimi Gaita, the supporting affidavit shows that the plot is registered as block 105/1556 in the name of Daniel Wataku Njoroge. Be that as it may, there is no evidence to show that the Respondent is in the process of having the suit property registered in either of the two persons mentioned in the body of the application and the supporting affidavit. The alleged list by the Respondent is not annexed. This being the case, I find that he Applicant has failed to prove that the Respondent has not complied with the decree which was issued on 27th June 2017. The upshot of this is that the Applicant’s application lacks merit. The same is hereby dismissed with no order as to costs.

It is so ordered.

Dated, Signed and Delivered at **Nairobi** on this **11th day of March 2021.**

E.O.OBAGA

JUDGE

In the Virtual absence of the Applicant’s advocate who was aware of the date of delivery of ruling.

Court Assistant: John

E.O.OBAGA

JUDGE