



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 44 OF 2020

**BEATRICE BONCHERE NYARURI (suing on behalf of
JASON NYARURI ONDITI).....PLAINTIFF**

VERSUS

ABEL HAYORA NYARURI.....1ST DEFENDANT

LAND REGISTRAR, NAKURU.....2ND DEFENDANT

RULING

1. The 1st Defendant vide the Notice of Motion dated 20th November 2020 sought for orders that the Plaintiff be restrained from accessing the main house in the suit property land parcel Njoro/Ngata Block 2/1613 (Kirobon) pending the hearing and determination of the suit and that the Plaintiff be ordered to vacate the main house in the suit property. The plaintiff did not file a response to the 1st Defendant's application.

2. The Plaintiff also filed an application dated 7th December 2020 seeking for orders that the O.C.S Menengai East Police Station provides security to her in occupation of the main house as ordered by the court on the 18th November 2020. The 1st Defendant did not also file a response to this application.

3. The court on 16th December 2020 directed the two applications to be canvassed by way of written submissions. The plaintiff filed her submissions to both applications as directed by the court but the defendant did not file any submissions and /or if he had filed any, the same had not been placed on the court record and were unavailable at the time of preparing this ruling.

4. The Plaintiff submitted that the 1st Defendant had failed to obey the court orders issued on the 18th November 2020 and therefore his application is an attempt to set aside orders that he had not obeyed and she therefore prayed that her application be allowed and the O.C.S Menengai East Police Station be ordered to ensure compliance with the said orders. The plaintiff relied on the case of *DLK vs CM (2020) eKLR* where Musyoka, J stated as follows:-

“—a party does not choose how to obey a Court order he should comply with it as framed. A party should first comply with a court order even as it asks the same court, or even a higher one, to review the orders. A court order is not a proposition or suggestion; it is a command. It must be obeyed first, and complaints raised later.”

5. The plaintiff also placed reliance on the case of *Standard Resource Group Ltd vs Ali Badawy & 2 others (2017) eKLR* where the court held that court orders must be obeyed and that those who wish to get rid of an order must do so by an appeal or by of review and as long as an order exists, the order must be obeyed to the letter.

6. Having reviewed the applications and the submissions filed by the Plaintiff, the following issues arise for determination;

a. Whether the Plaintiff should be restrained from accessing the main house in the suit property on the parcel of land Njoro/Ngata Block 2/1613 [Kirobon]

b. Whether the O.C.S Menengai East Police Station should be ordered to enforce the court orders issued on the 18th November 2020.

7. On 18th November 2020, the court ordered that the status quo be maintained where the plaintiff was to remain in possession of the main house meaning she was entitled to have access to the house. The 1st Defendant was allowed to use the land pending the hearing and determination of the suit. The use of the land by the 1st defendant did not constitute denying the plaintiff access and use of the main house. Two days after the court issued the said order, the 1st Defendant filed the application dated 20th November 2020 seeking for the Plaintiff to be restrained from accessing the main house contrary to the orders issued by the court.

8. The Court of Appeal in the case of Wildlife Lodges Ltd vs. County Council of Narok and Another (2005) 2 EA 344 (HCK) held that:

“It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a Court of competent jurisdiction to obey it until that order was discharged... a party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it...As long as it existed it must not be disobeyed... ..Consistent obedience to court orders is required, and parties should not take it upon themselves to decide on their own which court orders are to be obeyed and which ones overlooked.”

9. This was also the position held by the Court of Appeal in **Central Bank of Kenya & Another vs. Ratilal Automobiles Limited & Others Civil Application No. Nai. 247 of 2006**, where the court stated: -

‘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 a Court of law.’

10. Having regard to the present matter, there are valid orders on record which have neither been overturned on appeal nor reviewed or varied by the Court. The 1st Defendant ought to obey the court orders issued by the Court on 18th November 2020. The application dated 20th November 2020 is intended to circumvent the earlier orders of the Court and is an abuse of the court process as it seeks to have the court vacate the orders it had previously given without following the procedure as stipulated by law.

11. The Plaintiff’s application dated 7th December 2020 seeks for an order for the O.C.S Menengai East Police Station to provide security to facilitate her occupation of the main house as ordered by the court. It is my view that in light of the Plaintiff’s averment in her supporting affidavit that she is unable to access the premises and which averment has not been controverted by the 1st Defendant, an order directing the OCS to provide security to ensure compliance by the 1st defendant would be necessary in the enforcement of the court’s orders issued on the 18th November 2020.

12. In the result the 1st defendant’s application dated 20th November 2020 is ordered dismissed while the application by the plaintiff dated 7th December 2020 is allowed in terms of prayer (2). The costs of the applications shall be in the cause.

13. Orders accordingly.

Ruling dated signed and delivered virtually at Nakuru this 4th March 2021.

J M MUTUNGI

JUDGE