



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

MISCELLANEOUS APPLICATION NO. E 7 OF 2020

LEONARD LETITIO ONETU.....1ST APPLICANT

JULIUS LENGETE OLODARU.....2ND APPLICANT

TETU LESINET.....3RD APPLICANT

VERSUS

KARASANKA OLE MAAI1ST RESPONDENT

EMMANUEL KILELU MBARARIA.....2ND RESPONDENT

JACKSON LEMOMO MEREESI.....3RD RESPONDENT

ESELENKEI GROUP RANCH.....4TH RESPONDENT

THE LAND ADJUDICATION OFFICER.....5TH RESPONDENT

THE HON. ATTORNEY GENERAL.....6TH RESPONDENT

RULING

What is before Court for determination is the Applicants' application dated the 27th October, 2020 brought pursuant to Order 51 Rule 1 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the Civil Procedure Act; Section 5(1) of the Judicature Act; Rules 81.4 of the England Civil Procedure (Amendment No. 2) Rules 2012; Articles 48, 50 and 159 (2) (d) of the Constitution. The Applicants seek the following orders:

1. Spent.

2. That this Honourable Court be pleased to Order the 1st, 2nd and 3rd Respondents to be committed to civil jail for such a period as the Court may deem just and sufficient for willful and deliberate disobedience of the Orders issued by this Honourable Court on the 1st day of October, 2020 in Kajiado ELC Case No. 47 of 2020.

3. That in the alternative this Honourable Court be pleased to issue an Order compelling the Respondents to purge their contempt and forthwith comply with the status quo Orders issued on 1st day of October, 2020 in Kajiado ELC Case No. 47 of 2020 by abandoning the process of surveying, beaconing, demarcating and mapping of the Land Parcel Number KAJIADO/ ESELENKEI/1 registered in the name of ESELENKEI GROUP RANCH which is the suit property in the mention suit, and withdrawal of funds from Account No. 1197789588, Kenya Commercial Bank Branch Emali Branch held by the 4th Respondent.

4. That the Respondents do pay the costs of this application.

The application is premised on the summarized grounds on the face of it and the supporting affidavit of LEONARD OLETU, the 1st Applicant where he deposes that in August, 2020 they filed a suit against the Respondents herein being Kajiado ELC Suit No. 47 of 2020 together with an Application under Certificate of Urgency seeking injunctive reliefs against them. He confirms that on 1st October, 2020 when the said application came up for hearing, they compromised it, in the following terms: Parties to explore an out of court settlement;

mention on 19th January, 2021 to record a settlement; and obtaining status quo to be maintained. He contends that the Orders were read in the presence of the Counsels for all the parties. Further, that the said Orders were unambiguous, clear and binding on the Respondents. He claims the Respondents have commenced rigorous survey, beaconing and demarcation of the suit property immediately after issuance of the said orders in blatant, willful and deliberate disobedience of the terms of the aforementioned Orders issued on 1st October, 2020. He avers that the actions of the Respondents have already elicited emotions, unnecessary anxiety and tensions on the ground which is a recipe for chaos, anarchy, with the Applicants who represent the views of the majority of the membership of the group ranch have vowed not to take the actions of the Respondents lightly. Further, the Respondents' actions are driven by vengeance and ill motive as they have vowed to deny the Applicants and members they represent land by distributing their shares amongst themselves and other members and further render the suit pending in court an exercise in futility. He claims the Respondents have vowed to syphon the aforementioned account of the 4th Defendant in an endeavor to enrich themselves. He insists parties had agreed to maintain status quo so that a level playing field could be achieved so as to aid a faster amicable settlement and to avoid jeopardizing the pending suit, as well as to calm down the anxiety including tension on the ground. He reiterates that the 4th Respondent has over three thousand (3000) members while the suit property measures 74, 749 hectares and if the same is subdivided hastily, it would lead to a huge damage.

The application is opposed by the 1st to 4th Respondents who filed a replying affidavit sworn by Karasanka Ole Maai, the 4th Respondent's Chairman who confirms that together with the 1st and 2nd Respondents, they are officials of Eselenkei Group Ranch. He avers that the Applicants had filed a Notice of Motion dated the 4th August, 2020 in Kajiado ELC No. 47 of 2020 under certificate of urgency, where they sought various reliefs. Further, the issues in dispute revolved around the management of the Eselenkei Group Ranch and on 1st October, 2020, the Advocates agreed to maintain the obtaining status quo as parties explored an out of court settlement. He insists the Court never gave any injunctive orders restraining the Respondents from discharging their mandate as elected officials of the 4th Respondent. Further, the status quo was that the 1st to 3rd Respondents were to continue with their legally mandated duties as officials of the Group Ranch which included the process of surveying, subdivision, allocation and or alienation of land parcel number Kajiado/ Eselenkei/ 1 as well as continue operations of the Group Ranch account No. 1197789588 at Kenya Commercial Bank, Email Branch. He denies the allegations of syphoning funds from the said accounts and willfully disobeying the court orders. He contends that the Applicants have not made out a good case to convince the court to cite the 1st to 3rd Respondents for contempt and commit them to civil jail. He avers that the instant application is scandalous, frivolous as well as vexatious and ought to be dismissed.

The Applicants and Respondents filed their respective submissions to canvass the instant application.

Analysis and Determination

Upon consideration of the Notice of Motion application dated the 27th October, 2020 including the respective parties' affidavits and rivalling submissions, the only issue for determination is whether the 1st to 3rd Respondents should be cited for contempt and committed to civil jail.

The Applicants in their submissions contend that the 1st to 3rd Respondents have violated the status quo order issued on 1st October, 2020 and continued surveying the suit land as well as operating the 4th Respondent's bank account to their detriment. They insist the Respondents had knowledge of the Court Order which was clear as well as unambiguous. To buttress their arguments, they relied on the following cases: **Peter Mahinda Kanyora & 2 Others V Julius Mugo Gachagua (2020) eKLR; Shimmers Plaza Limited V National Bank of Kenya Limited (2015) eKLR; Basil Criticos Vs Attorney General & 8 others (2012) eKLR; Nancy Mugure Njuguna V Leonard Mungai Njoroge & Another (2017) eKLR; Johnson V Grant 1923 Sc 789 at Page 790; and Samuel M. Mweru & Others V National Land Commission & 2 others (2020) eKLR.** The 1st to 4th Respondents in their submissions were emphatic that the status quo order was that they were to continue discharging their lawful duties as officials of the 4th Respondent. They insist the status quo order was neither clear nor precise. Further, that the Applicants have not met the standard of proof in contempt proceedings. They relied on the following decisions: **Baobab Beach Resort Case as quoted in Saifudeen Abdullahi & 4 Others In Mombasa High Court Misc Civil Cause No. 11 of 2012; Shimmers Plaza Limited V National Bank of Kenya Limited (2015) eKLR; Ex parte Peter Nyamu Karaguri Muhuri Karaguri V Attorney General & 5 Others (2013) eKLR; James Gachiri Mwangi V John Waweru Muriuki & 3 others (2020) eKLR; and Priscillah Wanja Kibu V James Kiongo Kibui & another (2014) eKLR** to support their respective arguments.

Black's Law Dictionary (Ninth Edition) defines contempt of court as:- ***“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”***

In the case of **Johnson Vs Grant (1923) SC 789 at 790** Clyde L J noted:- ***“The phrase ‘contempt of court’ does not in the least describe the true nature of the class of offence with which we are here concerned.... The offence consists in interfering with the administration of the law; in impending and perverting the course of justice..... it is not the dignity of court which is offended – a petty and misleading view of the issues involved, it is the fundamental supremacy of the law which is challenged.”***

Section 29 of the Environment and Land Court Act provides: ***‘ Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both***

Further, in the case of **Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR** the Court of Appeal while dealing with the issue of status quo held that: ***‘ According to Ms Mc’ Asila who appeared for the respondent herein, there was “an element” of ambiguity in the said order. She could not nonetheless explain which part of the order was ambiguous or misunderstood. It is in the circumstances important to define what status quo means and what it meant for purposes of this appeal. We are apt to mention however, that when that order was made, none of the parties in Court sought any clarification from us as to what the status quo entailed. The presumption therefore must be that everybody knew the meaning and import of that order. “Status quo” in normal English parlance means the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events. We fail to see what can be ambiguous about that order. All it meant was that everything was to remain as it was as at the time that order was given. If there was any transaction of whatever***

nature that was going on in respect of the land in question, it had to freeze and await the discharging of the Court order. The agreement of sale may have been signed prior to that date, but once the court ordered maintenance of status quo, everything else had to wait.'

In the instant case, I note on 1st October, 2020 in Kajiado ELC No. 47 of 2020 when parties appeared before the Court to deal with an application for injunction, the parties agreed to maintain the obtaining status quo and explore an account of court settlement. The 1st to 4th Respondents have continued to survey and demarcate the suit land as well as operate the 4th Respondent's account and yet these formed the fulcrum of the application for injunction. They insist the status quo meant they were meant to continue managing the affairs of the group ranch, which fact is the bone of contention in this application for contempt. In applying the standards set in the **Shimmers plaza** case which I have cited above, on dealing with an order of status quo, I find that the 1st to 4th Respondents are not being candid. They claim the status quo was ambiguous but do not explain which part is ambiguous. Further, I note at the point the order was made, they never sought clarity of the same. They have admitted operating the 4th Respondent's account and undertaking survey, beaconing and demarcation of the suit property immediately after issuance of the orders dated 1st October, 2020 but deny they are in blatant, willful and deliberate disobedience of the terms of the said Orders. They have not explained how this matter will be settled out of court as they had agreed in Kajiado ELC No. 47 of 2020 which is yet to be determined.

Based on my analysis above, I find that the 1st to 3rd Respondents conduct of continuing to manage the affairs of the group ranch including the running the 4th respondent's accounts as well as undertaking survey, beaconing and demarcation of the suit property despite an order of status quo being in place; are clear acts of contempt of the said order. It is my considered view that once the parties had agreed to explore an out of court settlement while maintaining the obtaining status quo, it meant that everything was to remain as it was as at the time that the order was issued and no operation of the aforementioned account as well as survey, beaconing or demarcation in respect to the suit land in question was to continue until the matter had been settled.

It is against the foregoing while associating myself with the decisions cited above, that I find the Applicants have met the threshold set to cite the 1st to 3rd Respondents for contempt.

I however opine that committing the 1st to 3rd Respondents to Civil Jail would violate the provisions of Article 24 of the Constitution and will direct that the said Respondents do purge their contempt forthwith and comply with the status quo Orders issued on 1st day of October, 2020 in Kajiado ELC Case No. 47 of 2020 by abandoning the process of surveying, beaconing, demarcating and mapping of the Land Parcel Number KAJIADO/ ESELENKEI/1 registered in the name of ESELENKEI GROUP RANCH. Further, they should cease withdrawing funds from Account No. 1197789588, Kenya Commercial Bank Branch Emali Branch held by the 4th Respondent pending the settlement of the dispute herein.

In the circumstance, I find the application dated 27th October, 2020 merited and will allow it.

Costs will be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY IN KAJIADO THIS 8TH APRIL, 2021

CHRISTINE OCHIENG

JUDGE