



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 180 OF 2017

KENYA BROADCASTING CORPORATION.....PLAINTIFF/APPLICANT

VERSUS

KOMAROCK RANCHING AND FARMING

CO-OPERATIVE SOCIETY LIMITED.....1ST DEFENDANT/RESPONDENT

KOMAROCK RANCHING CO. LTD.....2ND DEFENDANT/RESPONDENT

RULING

1. What is before me is the Plaintiff's Notice of Motion dated 1st December, 2017. In the said Application, the Plaintiff is seeking for the following orders:

a. That Notice to Show Cause do issue to Joshua B. Lutukai to show cause why he should not be committed to civil jail for such periods as the court may order for contempt of court orders extracted on 9th October, 2017.

b. That the Officer Commanding Police Division (OCPD) Matungulu Police Station, Mr. Joshua B. Lutukai be committed to civil jail for such periods as the court may order for contempt of court orders extracted on 9th October, 2017.

c. That costs of this Application be provided for.

2. The Application is premised on the grounds that on 14th March, 2017, this court issued orders restraining and prohibiting the Defendants whether by themselves or through their agents from entering into, disposing of any interest and or interfering with the Plaintiff's occupation of parcel of land known as Donyo Sabuk/Komarock Block 1/9218; that the said orders were to be enforced by the Officer Commanding Police Division, Matungulu and that the suit land is registered in the name of the Permanent Secretary of the Treasury (*as a Trustee of the Ministry of Information and Communication*).

3. The Acting Managing Director of the Plaintiff deponed that on 31st August, 2017, the Defendants' agents, while aware of the injunctive orders of the court, trespassed on the suit land with a view of sub-dividing the same; that on 1st August, 2017, the Defendants' agents commenced sub-dividing the suit land together with a Surveyor and that the Defendants' agents and the Surveyor fixed beacons in respect to the sub-divided portions of the land.

4. The Plaintiff's Managing Director deponed that the Defendants' agents were aware of the injunctive order and that on 12th October, 2017, the process-server served the injunctive order that was issued on 9th October, 2017 upon Joshua B. Lutukai, the Officer Commanding Police Division, Matungulu Sub-County and Benard Maembe, the 1st Defendant's Director.

5. It is the Plaintiff's case that between 6th November, 2017 to date, the said police officer has allowed people to cultivate, erect fences, dig house foundations, develop roads and pull down the fence erected by the Plaintiff on the suit land.

6. The Plaintiff's Acting Managing Director finally deponed that the failure by the OCPD, Matungulu Sub-County, to enforce the orders of this court is a flagrant breach of the court orders and that if allowed to continue, this court will be subjected to ridicule thus eroding the rule of law.

7. In response to the Application, the Chairman of the Defendants, Benard Nzioki Maembe, deponed that he has never been served with any court order as alleged by the process-server; that he is not aware of any developments on the suit land nor is he aware of the people behind such developments, if any, and that the Plaintiff should have confirmed the identity of the people carrying out developments on the suit land.

8. The Defendants' Chairman finally deponed that the photographs annexed on the Applicant's Affidavit shows images of people who have not been enjoined in this suit or Application; that the Plaintiff is working with fraudsters to malign his name and that there is no certificate of the person who took the photographs annexed on the Plaintiff's Affidavit.

9. In his Supplementary Affidavit, the Defendants' Chairman deponed that the person who should be cited for contempt of court is the OCPD Matungulu Sub-County for failure to ensure the implementation of the orders of the court.

10. The Defendants' advocate submitted that the Defendants do not oppose the Application dated 1st December, 2017. However, they opposed the Notice of Motion dated 6th June, 2018 which is not before me. I have considered the said submissions. I have also considered the Plaintiff's submissions.

11. This matter has had unnecessarily too many Applications. Indeed, it seems that the parties herein are contended in filing one Application after the other instead of fixing the matter for hearing to enable the court determine the issue of ownership of parcel of land known as Donyo Sabuk/Komarock Block 1/9218. Indeed, in its Ruling dated 14th March, 2014, the court directed as follows:

“The Plaintiff to set the matter down for hearing in the next twelve (12) months so that the issues at hand can be solved expeditiously.” That never happened.

12. The present Application is seeking to cite the Officer Commanding Police Division (OCPD), Mr. Joshua B. Lutukai, Matungulu Police Station, Machakos County, for contempt. Incidentally, the Defendants are supporting the issuance of the said orders. Although the OCPD was served with the Application, he never responded to the same.

13. The Plaintiff's Acting Managing Director annexed on his Affidavit a copy of the Ruling dated 14th March, 2014. In the said Ruling, the court restrained the Defendants and their agents, or any one claiming under them, from dealing in any manner whatsoever with the suit land.

14. When this matter was transferred from Nairobi to this court, the court reiterated the order of Gacheru J. and directed that the Officer Commanding Police Division (OCPD) Matungulu Sub-County, to provide security in the implementation of the order of injunction.

15. The process-server has deponed that he served the OCPD with the order of this Court dated and issued on 9th October, 2017 on 12th October, 2017. The Plaintiff's complaint is that even after being served with the said order, the OCPD did nothing to prevent people, known or unknown, from cultivating and beaconing the suit land.

16. Although the Plaintiff has exhibited photographs showing the alleged cultivating and developments that was going on the suit land, the Plaintiff's Director did not inform the court the date that the photographs were taken and by whom. Indeed, considering that the current Application is quasi-criminal in nature, the Plaintiff was under an obligation to prove by way of photographs that the impugned actions on the suit land were done after the orders of 9th October, 2017. That is not apparent from the exhibited photographs.

17. In any event, there is no evidence before the court to show that the Plaintiff brought to the attention of the OCPD the alleged contemptuous actions of the people who were disobeying the court order. Considering that it is not in the province of the OCPD to guard the suit land for 24 hours every day, it was upon the Plaintiff to bring to the attention of the OCPD, in writing, and with full particulars of the activities that were being undertaken on the land. The Plaintiff seems not to have done that.

18. The failure by the Plaintiff to give cogent evidence on the date when the alleged acts of trespass accrued, and evidence showing that he brought to the attention of the OCPD the alleged contemptuous actions by the trespassers, I find the Application dated 1st December, 2017 to be unmeritorious. The Application is dismissed but with no order as to costs.

19. Just as observed by Gacheru J. on 14th March, 2014, this suit should be fixed for hearing, and in any event, before the end of the last term of this year.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 5TH DAY OF JULY, 2019.

O.A. ANGOTE

JUDGE