



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC CASE NO. 15 OF 2019**

**JOYCE WANGECI RUGA (Suing as the Personal Representative of the estate of**

**RUGA GITUKU – DECEASED).....PLAINTIFF**

**VERSUS**

**PHILIP SIRONKA.....1<sup>ST</sup> DEFENDANT**

**HANNAH GATHONI RUGA.....2<sup>ND</sup> DEFENDANT**

**HON. ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT**

**RULING**

What is before Court for determination is the Plaintiff's Notice of Motion Application dated the 13<sup>th</sup> June 2019 brought pursuant to Sections 3, 13, & 14 of the Environment and Land Court Act; Sections 1A, 1B, 3A and 63( e) of the Civil Procedure Act; Section 39(2) (g) and Rules 13, 40, 41 & 42 of the High Court ( Organization and Administration Act and Rules); Order 40 Rule 3 and Order 51 Rule 1 of the Civil Procedure Rules. The Applicant seeks to have the 1<sup>st</sup> and 2<sup>nd</sup> Defendants cited for contempt and committed to civil jail for 6 months for failing to comply with the Status Quo Order of the Court dated the 24<sup>th</sup> April, 2016, or in the alternative they be fined Kshs. 10,000.

The Application is based on the summarized grounds that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have disobeyed the Order of the Court issued to the effect that status quo was to be maintained. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents jointly and severally either by themselves or their servants, agents and/or officers have interfered with the suit property causing and proceeding with subdivisions and construction in total disregard of the Court's order. The said acts are contemptuous and the court has authority to punish for contempt.

The Application is supported by the affidavit of the Plaintiff JOYCE WANGECI RUGA where she reiterates her claim above and insists the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' have disobeyed the order of the court by fencing the suit land.

The Application is opposed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents who filed a replying affidavit sworn by PHILLIP OLE SIRONKA where he avers that the application is misconceived, misleading, fatally defective and bad in law. He avers that the Applicant has failed to seek leave to institute the instant application. Further, that there is no order issued by the Court on 24<sup>th</sup> April, 2019 to effect status quo. He insists the Plaintiff has not furnished Court with clear particulars of the breach of the alleged Order and no copies of official searches to show subdivisions have been undertaken. He reiterates that the photographs annexed to the supporting affidavit are irrelevant and meaningless as it may be from any other land. He denies the averments in the supporting affidavit and contends that he is a law-abiding citizen.

The 2<sup>nd</sup> Defendant HANNAH GATHONI RUGA filed a replying affidavit and deposes that the photographs annexed to the supporting affidavit are not proof of any subdivision or further activities ti the suit property. She insists the Plaintiff has not attached any evidence to show that the deceased's property is being interfered with.

The Applicant and the 1<sup>st</sup> including 2<sup>nd</sup> Respondents filed their submissions which I have considered.

**Analysis and Determination**

Upon consideration of the Notice of Motion application dated 13<sup>th</sup> June 2019 including the respective affidavits as well as the submissions filed herein, the only issue for determination is whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondents should be cited for contempt of the Order of the Court issued on 24<sup>th</sup> April, 2019.

The Applicant submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are in contempt of the order of status quo by the court on 24<sup>th</sup> April, 2019 and

annexed photographs of fenced land in her supporting affidavit. He relied on various cases including **Kimani Gachuhi & Another V Evangelical Mission for Africa & 3 Others (2018) eKLR** and **Katsuri Limited V Kapurchand Depar Shah (2016) eKLR** to support her arguments.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted that the Court never issued an order of status quo on 24<sup>th</sup> April, 2019. They relied on the case of **Wanjala Mining Compaany Limited V National Land Commission & 3 others (2017) eKLR** and **Kimanja Kamau (suing as the legal representative of the estate of Gideon Gitundu Kimere – Deceased) v Francis Mwangi Mwaura & Anor** .to oppose the instant application.

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.”***

Section 29 of the Environment and Land Court Act stipulates that: ***‘ 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***

I note these provisions allow the court to entertain an application for contempt as opposed to respondent's averments that the court cannot entertain an application for contempt unless leave is sought first.

In the case of **North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjohi (2016) eKLR** where Justice Mativo stated that: **' writing on proving the elements of civil contempt, learned authors of the book Contempt in Modern New Zealand have authoritatively stated as follows:-**

**' there are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases - (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant; (b) the defendant had knowledge of or proper notice of the terms of the order; (c) the defendant has acted in breach of the terms of the order; and (d) the defendant's conduct was deliberate.'**

In the instant case, as per the Court Records, on 24<sup>th</sup> April, 2019, there was no order issued for the maintenance of status quo. Further, except for the photographs which were annexed to the supporting affidavit, the Applicant has not demonstrated how the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have violated any Order. The Applicant has sought for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to be committed to Civil Jail but as per provisions of Article 24 of the Constitution, this would amount to a violation of their rights.

Based on my analysis, and in associating myself with the decisions cited above, I find the instant application unmerited and will disallow it.

Costs will be in the cause.

**Dated, Signed and Delivered in Kajiado this 1<sup>st</sup> October, 2019**

**CHRISTINE OCHIENG**

**JUDGE**