



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

MISC APPLICATION NO. 89 OF 2017

IN THE MATTER OF AN APPLICATION TO COMMIT TO CIVIL JAIL

FOR CONTEMPT OF COURT THE REGISTRAR OF LANDS, KAJIADO DISTRICT

AND

IN THE MATTER OF MISC CIVIL APPLICATION NO. 2 OF 2013 AT KAJIADO

AND

IN THE SENIOR RESIDENT MAGISTRATE COURT AT KAJIADO

PERIKAN MOKO PARUSAN.....APPLICANT

VERSUS

THE REGISTRAR OF LANDS KAJIADO DISTRICT.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

IN THE MATTER OF AN APPLICATION BY PERIKAN MOKO PARUSAN AGAINST

THEREGISTRAR OF LANDS, KAJIADO DISTRICT FOR AN ORDER OF COMMITAL

RULING

What is before Court for determination is the Notice of Motion application dated the 16th March, 2015 brought pursuant to section 5 (1) of the Judicature Act, Order 52 Rule 3 of the Rules of the Supreme Court of England 1965 and Section 3A of the Civil Procedure Act. The Applicant seeks orders to commit the Registrar of Lands Kajiado District to Civil Jail for disobeying an order made by the Hon. Kajiado Resident Magistrate on 21st March, 2014 compelling him to furnish the Applicant with particulars including records in regard to Kajiado/ Kitengela/ 7611 and or reconstruct the said records/ Green Card to enable the Applicant deal with his parcel of land.

The application is supported by the affidavit of the Applicant PARIKEN MOKO PARUSAN where he avers that he has severally attempted to get his land records but the 1st Respondent herein has been elusive and contemptuous in regard to the Orders served upon him on 23rd March, 2014. He contends that the act of disobeying the Court Order by the 1st Respondent herein has caused him stress and mental anguish as he wants to invest/ develop and/or deal with the said property.

The Application is opposed by the 1st Respondent who filed an affidavit sworn by PAUL TONUI who is the District Land Registrar, Kajiado Central District Land Registry where he avers that he is not able to issue the Applicant with a certified copy of the Green Card as ordered by the court since the Green Card is not authentic and the same has been withheld on grounds there is fraud suspected in the registration of the Applicant as the proprietor of Kajiado/ Kitengela/ 7611 that was a resultant subdivision of Kajiado/ Kitengela/ 4250 which also gave rise to Kajiado/ Kitengela/ 7612 and 7613 respectively. He explains that the joint registered proprietors of Kajiado/ Kitengela/ 4250 before subdivision were Fredrick Wakaba Gichia, Christopher Njenga Gathecha and Sospeter Gichaga Biruri who were registered as such on 29th September, 1994. Further, that Kajiado/ Kitengela/ 4250 was closed on partition on 20th July, 1998. He contends that after subdivision of Kajiado/ Kitengela/ 4250, Kajiado/ Kitengela/ 7612, was registered in the name of Fredrick Wakaba Gichia on 20th July, 1998, while Kajiado/ Kitengela/ 7613 was registered in the name of Sospeter Gichaga Biruri on 20th July, 1998 respectively. Further, it was expected that Kajiado/ Kitengela/ 7611 should have been registered in the name of Christopher Njenga Gathecha who was the joint owner of original parcel number Kajiado/ Kitengela/ 4250 but instead in unclear circumstances, the Applicant was registered as its proprietor. He claims the registration of the Applicant as the proprietor was improper, fraudulent and/or illegal for reason that the Applicant was not one of the joint

owners of the suit land before subdivision. Further, that the said registration is under investigation and a restriction has been placed on the Green Card for Kajiado/ Kitengela/ 7611 on the ground that there is fraud suspected. He reiterates that the Applicant should explain how he got registered as proprietor of Kajiado/ Kitengela/ 7611 and surrender the title deed he holds for cancellation.

The Applicant PARIKEN MOKO PARUSAN filed a further affidavit where he reiterates his claim above and explains that he had lost his title deed for Kajiado/ Kitengela/ 7611 and reported the loss at Kitengela Police Station. He contends that after Registrar of Lands Kajiado District was satisfied with the evidence on record in his office, vide a Gazette Notice No. 555 of 18th February, 2011, he gazetted the issuance of a new title deed which was reissued on 13th May, 2011. He disputes the Green Card attached to the replying affidavit and claims it looks suspicious and fake as well as created to frustrate him. Further, that entry for the re – issue of his title deed is not indicated therein and even the Land Registrar who entered the entry on 17th December, 2012 failed to counter sign it. He claims that he purchased land parcel number Kajiado. Kitengela/ 7611 from Christopher Njenga Gathecha and adhered to all the legal processes to obtain a new title in accordance with the Registered Land Act. He insists the Land Registrar was served with the Court Order dated 27th March, 2014 but never applied to set it aside nor review it.

The Applicant and Respondents filed their respective submissions, which I have considered.

Analysis and Determination

Upon perusing, the Notice of Motion application dated the 16th March, 2015 including the supporting/replying affidavits as well as the annexures thereon and all the parties submissions, the only issue determination is whether the District Registrar of Lands, Kajiado should be cited for contempt for failing to obey an order of the Court dated the 21st March, 2014.

As to whether the District Registrar of Lands, Kajiado should be cited for contempt for failing to obey an order of the Court dated the 21st March, 2014 and committed to civil jail.

The Applicants submitted that the District Registrar of Lands, Kajiado should be cited for contempt as he wilfully neglected to obey the order of the court dated the 21st March, 2014 which was served upon him on 27th March, 2014. He relied on various cases including **Woburn Estate Ltd and Margaret Bashforth (2016) eKLR; Nairobi HCC NO. 7 of 2016 Spenco Kenya Ltd (Under Administration) Vs The Chief Land Registrar (2018) eKLR; Ramesh Popatlal Shah & 2 Others V National Industrial Credit Bank Limited (2005) eKLR; and Trusted Society of Human Rights Alliance V Cabinet Secretary for Devolution and Planning (2017) eKLR** to support his arguments.

The Respondents submitted that there has been an explanation on the breach of the Court Order and the said disobedience was not wilful. They insist the Applicant has not proved the required standard of contempt. They have relied on various cases including **Trusted Society of Human Rights Alliance V Cabinet Secretary for Devolution and Planning (2017) eKLR; Fredrick Okolla Ojwang V Orange Democratic Movement & 2 others (2017) eKLR; Mburu Ndekei Vs Ruth Njeri Mutema (2017) eKLR and Lucas Mbaru Munga & Another V Pancras Mbaru Rondo & 2 Others (2012) eKLR** 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***

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, the 1st Respondent averred that he had not wilfully disobeyed the Court Order and provided the history of the suit land. He stated that there was a suspected fraud culminating in the registration of a restriction against the Applicant's alleged title. The Applicant confirmed as per the Green Card, the Land Registrar failed to counter sign it after the title had been re issued to him. The Applicant however contended that the Applicant should be committed to civil jail for failing to obey the Court Order.

Based on the 1st Respondent's explanation in regards to the history of the suit land and the records furnished in the replying affidavit, I find that his conduct was not deliberate as there is suspected fraud in respect of the Applicant's title which the Land Registrar as a Custodian of Land Records had to investigate to confirm true ownership. I further opine that committing the 1st Respondent to Civil Jail would violate his rights as enshrined in Article 24 of the Constitution

Based on the facts before me and in associating myself with the decisions cited above, I find that the Applicant has failed to meet the standard set to cite the 1st Respondent for contempt.

In the circumstance, I find the instant application unmerited and will disallow it.

Costs will be in the cause.

Dated, Signed and Delivered in Kajiado this 1st October, 2019.

CHRISTINE OCHIENG

JUDGE