



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

MILIMANI LAW COURTS

ELC. CASE NO. 204 OF 2014

THUITA RITHO.....PLAINTIFF

VERSUS

SALIM ALI1ST DEFENDANT

FATUMA ALI.....2ND DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 30th April 2014 and filed on 7th May 2014 in which the Plaintiff/Applicant seeks for orders as follows:-

- a. That the persons cited herein namely Salima Ali and Fatuma Ali (hereinafter referred to as the “contemnors”) who are hereby cited for contempt be convicted and committed to civil jail for a period not exceeding six months or such other sentence as may be found just in the circumstances.
- b. And/or in the alternative the structures constructed by the contemnors on the parcel of land known as Nairobi/Block 61/717 (hereinafter referred to as the “suit property”) be demolished and the Plaintiff/Applicant be compensated for the losses he has suffered as a result of the disobedience of the orders of this court by the contemnors.
- c. That the contemnors having uprooted the beacons to the suit property, this court do hereby direct the contemnors to have the suit property re-surveyed and beacons re-installed at their cost.
- d. That the costs of this Application be provided for.

This Application is premised on the grounds appearing on its face together with the Supporting Affidavit of the Plaintiff/Applicant, Thuita Ritho, sworn on 30th April 2014 and filed on 7th May 2014 in which he averred that the Defendants/Respondents have continued with the construction on the suit property at night in blatant contempt of the court order issued by this Court on 25th February 2014 (hereinafter referred to as the “court order”). He then stated that he believes that the actions by the Defendants/Respondents amount to contempt of this Honourable Court. He then stated that it is in the interest of justice and for the purpose of upholding the dignity and honour of this Honourable Court that the court order be obeyed. On those grounds he sought for this Application be allowed.

The Application is further supported by the Supporting Affidavit of David Ombati sworn on 30th April 2014 and filed on 7th May 2014 in which he averred that he is a resident of Makina in Kibera and the caretaker employed by the Plaintiff on the rental property located on the suit property. He averred that he took up employment as a caretaker of this rental property in the year 2010. He further averred that they have lived peacefully with tenants on the suit property until sometime towards the end of the year 2010 when one Abdalla Ali invaded the suit property asking tenants to vacate. He then stated that the police resolved this issue when the said Mr. Ali was told that he had no interest in the suit property and was trespassing. He then stated that matters remained peaceful until sometimes in the year 2013 when the contemnors invaded the suit property and demolished toilets and bathrooms. He added that the Plaintiff’s tenants are now forced to use public ablution facilities where they must pay before they can use the facilities. He then stated that the Plaintiff told him that he had taken legal action against the contemnors and that on 25th February 2014 the court order was issued. He stated that on account of the court order, the contemnors shouldn’t trespass or continue construction of the suit property. He then stated that despite there being the court order against them, the contemnors continued construction work on the suit property during the nights particularly over the weekend. He then stated that the contemnors had recently completed a room and had already rented it to a female tenant. He added that on several occasions, the contemnors together with other people unknown to him came to the suit property and threatened the Plaintiff’s tenants with forceful eviction

and violence alleging that they had been given titles to the suit property by Honourable Ngilu. He also stated that the contemnors had threatened him with acts of violence saying that they know how to dispose of him. He stated that the contemnors have actually assaulted his daughter who is a minor and he reported this to the Kilimani Police Station. He said that he now lives in fear for his life and that of his family and has told the Plaintiff that he would be moving to an alternative place of residence. He added that the contemnors being Nubians and other members of that community are likely to become a danger to those not of the same ethnicity who live in Kibera. He also added that should this court fail to determine this matter swiftly, he fears that bloodshed is imminent in this area. On that ground, he urged the court to allow this Application.

The Application is contested. The 1st Defendant/Respondent, Salima Ali, filed her Replying Affidavit sworn on 23rd May 2014 and filed on 26th May 2014, in which she averred that she had not been served with the contempt proceedings and that no affidavit of service confirming personal service had been produced. She denied having built or trespassed upon the suit property as claimed by the Plaintiff. She then stated that there is a deliberate attempt by the Plaintiff/Applicant to vary the status quo order that was given by this Honourable Court on 25th February 2014. She admitted that on 20th March 2014 her advocates on record received a letter from the Plaintiff's advocates on alleged violation of the court order. She then stated that as a family, they were born and have lived all their lives on the suit property. She then stated that on 26th of March 2014, the Plaintiff/Applicant went to the suit property and harassed her tenants contrary to the claim by the Plaintiff. She then stated that the land had never been surveyed or beacons put. She denied having threatened anybody, stating that she lives with her neighbours in peace even after having grabbed their land. The 2nd Defendant/Respondent, Fatuma Ali, also filed her Replying Affidavit dated 23rd May 2014 and filed on 26th May 2014 in which she made similar averments as those of the 1st Defendant/Respondent.

I will address prayer (a) of this Application first and foremost which prayer seeks for the committal of the contemnors into civil jail for disobedience of the court order. The applicable law is as follows:

Section 63(c) of the Civil Procedure Act, 2010 provides that,

“In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold”.

Further, it is provided under **Order 40 Rule 3(1) of the Civil Procedure Rules, 2010** that,

“3(1) In case of disobedience, or breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release”

The Court of Appeal in **Refrigeration and Kitchen Equipment Utensils Ltd vs Shah & Others 1990 LLR 294 (CAK)** held that,

“It is Essential for the maintenance of the rule of law and good order that the authority and the dignity of the court are upheld at all times. Therefore the court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors”.

Are the contemnors “proved contemnors”? It is true that the court issued the court order to the Plaintiff on 25th February 2014 which allowed the prayer for an interim temporary injunction in the Notice of Motion dated 21st February 2014. The contemnors admit knowledge of the court order as in their Replying Affidavits, they stated that on 20th March 2014 their advocates on record received a letter from the Plaintiff's advocates on alleged violation of the court order. Though they having trespassed the suit property, claiming to have been born and bred on the suit property, this court is not convinced by this line of defense. Instead, the court considers the true position to be as stated by the Plaintiff and especially by the Plaintiff's Caretaker who was employed to manage the Plaintiff's investment of rental rooms on the suit property. The contemnors evidently invaded the suit property and sought to evict the Plaintiff's caretaker and tenants therefrom. The contemnors are in my finding “proved contemnors” who blatantly disobeyed the court order. The court is called upon to deal firmly with proved contemnors. In this case, I hereby sentence the contemnors to each serve a sentence of one (1) month in civil jail.

I will not address prayers (b) and (c) of this Application as they are alternative prayers and raise issues which can only be determined when the main suit is heard and determined.

It is so ordered.

SIGNED AND DATED AT NAIROBI BY LADY JUSTICE MARY M. GITUMBI THIS 24TH DAY OF APRIL 2018.

MARY M. GITUMBI

JUDGE

DELIVERED AT NAIROBI BY JUSTICE SAMSON O. OKONG'O THIS 3RD DAY OF MAY 2018.

SAMSON O. OKONG'O

PRESIDING JUDGE