



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC APPEAL NO. 35 OF 2019

HANIB AYUB SULEIMAN.....APPELLANT

-VERSUS-

MARY LANKAS.....RESPONDENT

RULING

By a Notice of Motion dated 16th March, 2020 and brought under order 40 Rule 1,2 and 3 and order 51 Rule 1 of the Civil Procedure Rules and under section 4,5 and 28 of the Contempt of the Court Act and articles 159 (2) (d) of the Constitution of Kenya 2010 and sought the following orders: -

(i) Spent

(ii) That the Respondent herein Mary Lankas and for contempt of court be committed to Civil Jail for a period of six (6) months and/or be fined as the court may deem appropriate in the circumstances.

(iii) That the costs of this application be borne by the respondent herein.

The Application is based on the grounds that the court had issued orders stopping any dealings with the suit property pending the hearing and determination of the Appeal and that despite service of the said orders on the Respondent personally and on her counsel, the Respondent had disobeyed the same and continued to deal in the suit land and caused the same to be sub-divided and thus the Respondent has no intention to obey the orders of the court and therefore be punished for contempt of court.

The application is supported by the affidavit of the Appellant in which he stated that he had previously satisfied a decree of the court and deposited the sum of kshs. 480,000 in the court to satisfy the judgement of the court. However, the Respondent filed an Appeal thereafter against her own decree that was dismissed by the High Court and she later went back to Chief Magistrate's court to execute her own decree. He further argued that he sought orders from the court to stop any dealings on the land which orders were granted but the Respondent despite the existence of the court order continued to deal with the suit land and he attached copies of search carried out on the suit property to prove the said claim and hence the instant application.

The application was opposed by the Respondent by way of a replying affidavit. The Respondent stated that the Judgment of the court did find that the Respondent herein was to choose the manner in which she was to execute her decree and that she consequently applied the correct procedure to enforce the decree of the court.

The Respondent further stated that she had obtained orders of the court to transfer 4 Acres out of parcel No. Cis Mara/Oleleshwa/544 and Cis Mara/Oleleshwa 545. On 25/4/2019 upon execution of the decree of the court she had title to the property and there being no inhabitation on the property she was at liberty to exercise her rights over the suit property and therefore thus argue the instant application was misplaced.

I have considered the application before me, the replying affidavit in opposition to the same and the submissions filed by the parties. This is an application in which the Applicant is seeking the court to find the Respondent to be in contempt of court. It is now well settled in law what constitutes contempt of court and it has been defined as any willful disobedience of an order by any party shall constitute contempt of court. In the instant application the Applicant contends that the Respondent had despite the existence of a court order proceeded to deal with the suit by causing the same to be sub-divided into various other parcels despite the court ordering that there be a stay of such dealing.

The Respondent contends that she is the registered owner of the suit property and therefore could not be in contempt by dealing with the said property.

The genesis of the application herein is that the Respondent obtained Judgement in Narok CMCC No. 8 of 2007 in which the court directed the Appellant/Applicant herein to deposit the sum of kshs. 480,000 in satisfaction in lieu of 4 acres of land as a decree issued by the court. The Appellant had deposited the said sum and proceeded to file an appeal in the High Court in which this court found the appeal had no

merit and the same was dismissed.

It is upon the dismissal of the appeal that the respondent proceeded to deal with the subject property and hence the application herein.

The condition that one must satisfy before one is found to be in contempt are that the terms of the order must be clear from any ambiguity, the contempnor had knowledge or notice of the order, that there was a breach of that order which is deliberate.

In the instant matter there existed an order that had barred the Respondent from dealing with the suit land in any manner and in her replying affidavit in opposition to the application she has neither denied the existence of the order nor the lack of service of the said order and with the knowledge of the existence of the order of the court, the Respondent willfully and deliberately proceeded to sub-divide the suit.

The Respondent through the hearing of the matter herein had knowledge about the existence of the court order and therefore her disobedience of the same in participating in the sub-division of the suit is contemptuous of the aforesaid order.

Section 29 of the Environment and Land Court Act provides that any person who refuses, fails or neglects to obey an order given under this Act commits an offence, and shall, on conviction be liable to a fine not exceeding 20 million or imprisonment for a term not exceeding two years or both. Having found that the Respondent is guilty of contempt I order that she pays a fine of kshs. 100,000 within 60 days of this Ruling failing which she be committed to civil jail for a term of 3 months.

Since there is an application on stay of execution that is pending I order that parties are hereby directed to maintain the status quo that is obtaining so as to preserve the subject matter and to expedite hearing of the substantive appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK ON THIS 14TH DAY OF JULY, 2021

Mohamed N. Kullow

Judge

14/7/2021

In the presence of: -

CA:Chuma

Ms Cheruto holding brief for Musembi for the Appellant/Applicant

Mr Tanyasis for the Respondent