



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**ELC. CASE NO. 11 OF 2017**

**(FORMERLY NAIROBI ELC. CASE NO. 1090/2014)**

**GUJRAL SANDEEP SINGH RAGHBIR.....PLAINTIFF/APPLICANT**

**VERSUS**

**MINISTER FOR PUBLIC WORKS, ROAD & TRANSPORT,**

**COUNTY GOVERNMENT OF KAJIADO.....1<sup>ST</sup> DEFENDANT/1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF KAJIADO.....2<sup>ND</sup> DEFENDANT/2<sup>ND</sup> RESPONDENT**

**RULING**

What is before Court for determination is the Plaintiff/Applicant's Notice of Motion application dated the 9<sup>th</sup> December, 2019 brought pursuant to Sections 1A, 1B & 3A of the Civil Procedure Act; and Order 51(1) of the Civil Procedure Rules. The Applicant seeks the following orders:

1. Spent.
2. The Respondents are hereby ordered to comply with the Judgement/Decree of this Honourable Court given on 23<sup>rd</sup> January, 2018.
3. The OCS Kitengela Police Station, do supervise and/or ensure compliance of the Judgement/ Decree dated 23<sup>rd</sup> January, 2018.
4. The cost of this application be in the cause.

The application is premised on the grounds on the face of it and the supporting affidavit of the Applicant GUJRAL SANDEEP SINGH RAGHBIR where he confirms that on 23<sup>rd</sup> January, 2018, a judgement was delivered in his favour and an order of permanent injunction issued restraining the Respondent or its agents from harassing, threatening, intimidating, trespassing upon, demolition or any manner interfering with his stores, perimeter walls, restaurant including other structures erected on land parcel number Noonkopir Trading Centre/195 hereinafter referred to as the 'suit land'. He claims despite the said court order; the Respondents have continued to trespass on the suit land and demolish structures thereon which matter he reported to the Police who directed him to obtain an order from court in his favour. He contends that since October 2019, he has not been able to get assistance or protection from the Police with most tenants on the suit land fearing for their property and threatening to terminate the tenancy. Further, Quickmart Supermarket wanted to enter into a tenancy agreement with him but skipped as they were skeptical that they would not get protection for their property once they invested thereon. He avers that sometime in April, 2019 he filed contempt proceedings against the Respondents, the same being ELC Mis Appl. No. 27 of 2019 which proceedings are still pending. He seeks court's protection and orders strictly directed to the OCS Kitengela Police Station to supervise and/or ensure the compliance of the said orders.

The Respondents though granted leave of seven (7) days to file their replying affidavit on 21<sup>st</sup> April, 2021, failed to do so.

The Applicant declined to file written submissions but sought to rely on the application and annexures.

**Analysis and Determination**

Upon consideration of the instant application including the supporting affidavit as well as the annexures thereon, the only issue for

determination is whether the Respondents should be directed to comply with the Judgement/Decree of this Honourable Court given on 23<sup>rd</sup> January, 2018 and for the OCS Kitengela Police Station, to ensure compliance with the said order.

I note the Plaintiff filed this suit against the Defendants on 11<sup>th</sup> August, 2014 through a Plaint and sought for various orders including: A permanent injunction restraining the Defendants either by themselves, their agents and or servants from harassing, threatening, intimidating, trespassing upon, demolishing and or in any manner whatsoever interfering with the Plaintiff's stores, perimeter wall, restaurant and other structures erected on the property known as title number Noonkopir Trading Centre/195; A declaration that the property known as title number Noonkopir Trading Centre/195 in Kajiado County belongs to the Plaintiff; Special damages; General Damages and costs. After hearing this matter, where both parties fully participated, the Court entered Judgement on 23<sup>rd</sup> January, 2018 where it granted the following orders:

(a) That judgement is hereby entered for the plaintiff against the defendants in the sum of Kshs. 10, 000,000/= comprising of Kshs. 1,000,000/= as general damages for trespass and Kshs. 9,000,000/= as exemplary damages.

(b) That a declaration is hereby issued, that as against the defendant, the plaintiff is the owner of the land parcel Noonkopir Trading Centre/195.

(c) A permanent injunction be and is hereby issued restraining the Defendants either by themselves, their agents and or servants from harassing, threatening, intimidating, trespassing upon, demolition and or in any manner whatsoever interfering with the Plaintiff's stores, perimeter wall, restaurant and other structures erected on the property known as title number Noonkopir Trading Centre/195.

(d) The costs of the suit are awarded to the Plaintiff.

The Plaintiff/ Applicant avers that ever since the entry of the judgement, the Defendants/ Respondents have declined to adhere to the said orders, continued trespassing on the suit land and undertook demolitions. I note the Defendants did not file any response to controvert the Plaintiff's averments. Be that as it may, I have had a chance to peruse the annexures to the instant application and I note from the photographs that there are various demolitions that have taken place. It is trite that Court Orders are sacrosanct and should be obeyed. It is unfortunate that the 1<sup>st</sup> Respondent is a County Executive of the 2<sup>nd</sup> Respondent which is a County Government and they continue to disobey orders from a court of competent jurisdiction and are defiant contrary to the provisions of the Fair Administrative Action Act including Article 50 of the Constitution. Further, that the Police that are supposed to assist the Applicant have declined to do so.

It is against the foregoing that I find Plaintiff/Applicant is entitled to the orders sought in the Notice of Motion application dated the 9<sup>th</sup> December, 2019 and will allow it. I will proceed to make the following final orders:

1. The Respondents be and are hereby ordered to comply with the Judgement/Decree of this honourable court given on 23<sup>rd</sup> January, 2018.

2. The OCS Kitengela Police Station, be and is hereby directed to supervise and/or ensure compliance of the Judgement/ Decree dated 23<sup>rd</sup> January, 2018.

3. The cost of this application be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 28<sup>TH</sup> DAY OF SEPTEMBER, 2021**

**CHRISTINE OCHIENG**

**JUDGE**