



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. APPEAL NO. 1 OF 2015

MUTEMI NJERU.....1ST DECREE HOLDER/APPLICANT

NTHIGA NJERU.....2ND DECREE HOLDER/APPLICANT

MURYUNGI NYAGA.....3RD DECREE HOLDER/APPLICANT

VERSUS

NGARI NYAGAH.....JUDGMENT DEBTOR/ RESPONDENT

RULING

1. This Ruling is in relation to a Notice of Motion Application dated 6th October, 2020 in which the Decree holders/Applicants are seeking for the following orders:

a) That this Honorable Court be pleased to summon the Judgment Debtor to show cause why he should not be found in contempt of this Honourable Court for disregarding and disobeying this Honourable Court's Judgment and Decree orders given on 20th July 2018 and extracted on 28th September 2018.

b) That the Judgment Debtor be found to be in contempt of this Honourable Court's Judgment and Decree orders given on 20th July 2018 and extracted on 28th September 2018, and the court do proceed to commit him to Civil Jail for periods that the court shall deem fit but not exceeding 30 days.

c) That the costs of this Application be provided for.

2. The Application is supported by the Affidavit of the 3rd Decree Holder who has deponed that on 20th July, 2018, this court delivered its Judgment allowing the Applicants' Appeal and that the court directed that the report on the disputed portion of land prepared by the Chief of Ngongoni Location dated 23rd March, 2012 together with the accompanying sketch plan be implemented by the parties.

3. The 3rd Decree Holder deponed that the Decree and the penal notice were served upon the Respondent personally at his home by a court process server; that the Respondent's advocate had also been notified of the court Decree and that the Decree was also served upon the Land Adjudication office- Kyuso, for implementation.

4. It was deponed that shortly after the court delivered its Judgment, the adjudication exercise commenced. However, the Land Adjudication Officer registered the disputed portion of land in the names of the four parties to this case prompting them to lodge an objection against the inclusion of the name of the Judgment Debtor in the Title Register.

5. It was deponed by the 3rd Decree Holder that the disputed portion was given Plot No. 2411; that the objection raised was subsequently heard and the Land Adjudication Committee made a decision to implement this court's decision by declaring that Plot No. 2411 be registered in the names of the Applicants and that despite full knowledge of the court's Decree and the decision of the Land Adjudication Committee, the Judgment Debtor blatantly refused to obey the same and re-entered the disputed portion of land, placed thorns/shrubs as a boundary around the plot and placed armed men to keep the Decree Holders away from the suit property.

6. It was deponed that this is the planting season and the Applicants should be preparing the land for planting but their efforts have been hampered by the actions of the Respondent, which actions are highly prejudicial to them and that the Respondents should be committed to civil jail.

7. The Motion was opposed vide Grounds of Opposition dated 19th November, 2020 filed by the Respondent. The Respondent averred that the Application was filed prematurely as no leave of the court was sought and or granted by this court; that he is not in contempt of any Court order; that he is not the one who was to implement the Chief's Report and that if he is in contempt, then the Applicants are equally in contempt of the Court Order.

8. The Application was canvassed by way of written submissions. The learned counsel to the Applicants submitted that leave was not a requirement in the current Application. Counsel relied on the case of **Christine Wangari Gachege vs. Elizabeth Wanjiru Evans & 11 Others (2014) eKLR** in which the Court of Appeal held that no leave is required to bring committal for contempt proceedings in relation to breach of a court order, Judgment or undertaking.

9. The Applicants' counsel submitted that the Respondent did not dispute knowledge of the existence of the orders of the court; that the Respondent has been fully participating in the implementation of the same during the land adjudication process and that the Respondent has only refused to give vacant possession of the land and therefore not obeyed the court order.

10. The Respondent's advocate submitted that the Applicants have not informed the court which part of the order has been disobeyed; that the order required both parties to implement it and that no mechanism has been put in place to implement the order of the court.

11. In **Africa Management Communication International Limited vs. Mathenge Mugo & Another [2013] eKLR** the court defined the meaning of contempt of court as contained in the Black's Law Dictionary as:

“Conduct that defies authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable by fine or imprisonment.”

12. In the same case, the court quoted with authority the holding of the learned Judge in the case of **Teachers Service Commission vs. Kenya National Union of Teachers & 2 Others [2013] eKLR** where Ndolo J. observed as follows:

“38. The reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with integrity to the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law.”

13. As was held in the case of **Gatharia K. Mutikika vs. Baharini Farm Ltd [1985] KLR 227**, contempt proceedings are *quasi-criminal* in nature and it is incumbent on the Applicant to prove that the Respondent's actions were deliberate in the sense that he deliberately or willfully acted in a manner that breached the order. The court held as follows:

“The Courts take the view that where the liberty of the subject is, or might be involved, the breach for which the alleged contemnor is cited must be precisely defined. A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily proved... I must be higher than proof on a balance of probabilities, almost, but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to offence, which can be said to be quasi-criminal in nature.”

14. Indeed, as was held by the Court of Appeal in the case of **Christine Wangari Gachege vs. Elizabeth Wanjiru Evans & 11 Others (2014) eKLR**, no leave is required to bring committal for contempt proceedings in relation to breach of a court order, Judgment or undertaking.

15. The only issue that arises for determination is whether the Respondent is in contempt of the Decree of the court given on 20th July, 2018 and issued on 28th September, 2018. In the Decree, the court directed as follows:

a) *That the Judgment of the court in Kyuso PMCC No. 39 of 2011 be and is hereby set aside.*

b) *That the report of the Chief of Ngongoni Location dated 23rd March, 2012 together with the accompanying sketch plan be implemented by the parties herein;*

c) *That each party to bear the costs of this Appeal and the costs in Kyuso PMCC No. 39 of 2011.*

16. The Respondent has not controverted the Applicants' depositions that this court directed that both parties implement the Report of the Chief of Ngongoni Location dated 23rd March, 2012. After the Decree of this court was issued, the same was presented to the Land Adjudication Committee who adopted it on 16th October, 2019.

17. Although the Applicants have stated that the Respondent has declined to obey the orders of this court, the photographs annexed on the Affidavit do not indicate the person who took the photographs and under what circumstances. Indeed, the person who took the photographs should have filed an Affidavit giving details of the date that the photographs were taken and what the Respondent was doing on the land which was contrary to the orders of this court.

18. Suffice to say that the Respondent should obey the decision of this court which was not only served on him, but was also clarified in the letter of the Kyuso Sub County Land Adjudication and Settlement Officer dated 3rd September, 2020. The Respondent should give vacant possession of P/No. 2411.

19. Having not proved that the Judgment Debtor is in contempt of the orders of this court, the Decree Holders' Application dated 6th October, 2020 is dismissed with no order as to costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 24TH DAY OF SEPTEMBER, 2021.

O.A. ANGOTE

JUDGE