



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUA E.L.C CASE NO. 258 OF 2017

(FORMELY MERU E.L.C NO.116 OF 2017)

ALVIN MBAE.....1ST RESPONDENT/1ST PLAINTIFF

ALICE MBIRO.....2ND PLAINTIFF(DECEASED)

WILSON MBAABU.....3RD RESPONDENT/3RD PLAINTIFF

VERSUS

EDWIN NYAGA MUKATHA.....1ST APPLICANT/DEFENDANT

MONICA K. MUGO.....2ND APPLICANT/DEFENDANT

ANDERSON NKONGE MUGO.....3RD APPLICANT/DEFENDANT

RULING

1.This ruling is in respect of the notice of motion application dated **20th September, 2021** in which the Applicants/Defendants seek the following orders:

i) That due to the nature and Urgency of the Instant application, the same be heard Ex-Parte, save for inter-parte hearing.

ii) THAT this Honourable Court be pleased to direct the O.C.S Chogoria Police Station arrest the 1st Respondent/Plaintiff Mr. Alvin Mbae and the 3rd Respondent/plaintiff Mr. Wilson Mbaabu and produce them to this Honourable court to answer charges of disobedience of this Honourable Court Orders issued on 9th December 2020 and 8th March 2021 respectively and further threatening the Applicants/Defendants on the suit Lands L.R MWIMBI/MURUGI/1715 and 1716.

iii) THAT the 1st Respondent/plaintiff and 3rd Respondent/plaintiff be committed to Civil jail for disobedience of court orders issued on 9th December 2020 and 8th March 2021 respectively.

iv) That the cost of this application be provided for.

2. The application is based on the grounds that the 1st Respondent/plaintiff and 3rd Respondent/plaintiff were duly served with this Honourable Court orders issued on 9th December 2020 and 8th March 2021 respectively.

3. The applicants aver that the 1st Respondent/plaintiff and 3rd Respondent /plaintiff did not lodge any Appeal against the orders issued on 9th December 2020 and 8th March 2021 respectively.

4. The applicants further aver that the 1st Respondent/plaintiff and 3rd Respondent/plaintiff have with impunity disobeyed the said court orders issued on 9th December 2020 and 8th March 2021 respectively and further destroyed the survey beacons erected by the District Surveyor in respect of the Suit Lands L.R MWIMBI/MURUGI/1715 and 1716 on 28th June 2021.

5. The applicants contend that the 1st Respondent/plaintiff and 3rd Respondent/plaintiff are treating this Honourable Court into great

disrepute in disobeying its lawful orders. That it is in the interest of justice that the orders sought be granted, to deter others hell bent in disobedience of lawful court orders.

6. That unless the orders sought are granted, the Court orders issued on 9th December 2020 and 8th March 2021 respectively, shall be in vain and subject the 1st, 2nd and 3rd Applicants/Defendants to suffer irreparable loss and damage.

7. The application is supported by the affidavit of MONICA K. MUGO the 2nd Applicant/Defendant.

8. In the supporting affidavit the 2nd Applicant has stated that on 9th December 2020 and 8th March 2021, the Honourable Court directed the 1st and 3rd Respondents/plaintiffs to vacate from L.R MWIMBI/MURUGI/1715 and 1716. That the said orders issued on 9th December 2020 and 8th March 2021 respectively were duly served upon the 1st Respondent/plaintiff and 3rd Respondent/plaintiff by a Licensed Court Process server. A copy of the Affidavit of service has been exhibited. That the 1st and 3rd Respondents/plaintiffs did not apply for Review and/or file any Appeal against the said orders issued on 9th December 2020 and 8th March 2021 respectively.

9. The 2nd Applicant avers that on 28th June 2021, the District Surveyor Meru South and the O.C.S Chogoria police Station duly visited the suit lands L.R MWIMBI/CHOGORIA/1715 and 1716 and restored the boundaries as directed on the order issued on 8th March, 2021. A letter dated 16th June, 2021 by the surveyor is annexed. That the 1st and 3rd Respondent/plaintiffs have destroyed the boundaries features and/or beacons erected by the District Surveyor Meru South on 28th June 2021. That further, the 1st and 3rd Respondents/plaintiffs have adamantly refused to vacate from the Suit Lands L.R MWIMBI/MURUGI/1715 and 1716 and are threatening the 2nd Applicant's life.

10. The 2nd applicant avers that the 1st Respondent/plaintiff Mr. ALVIN MBAE is a police Officer and who has mobilized goons in his village to attack any Officer coming to execute the Court Orders and it is in the interest of justice that Mr. Alvin Mbae and Wilson Mbaabu be arrested and charged for disobeying lawful court orders and threatening her life.

11. The Applicants contend that unless the orders sought are granted, the Court orders of 9th December, 2020 and 8th March 2021, shall be in vain and subject them to irreparable loss and damage.

12. The respondents have not filed any response to the said application despite being granted several opportunities to do so by the court.

13. The court directed parties to canvass the application by way of written submissions and only the Applicants filed their submissions on 8th December, 2021.

14. The Applicants counsel submitted that the Respondents have not offered any explanation as to why this Honourable court's orders issued on 9th December, 2020 and 8th March, 2021 respectively were not complied with despite the same being served upon them. It is the Applicants submissions that the Respondents are in contempt of this Honourable court and the orders sought herein are appropriate in the circumstances to deter others from disobeying lawful orders with outright impunity.

15. The Applicants counsel cited the provisions of order 22 Rules 82 and 83 of the Civil Procedure Rules as read with Section 51 of the Civil Procedure Act that clearly spelt out the penal consequences for any Judgment Debtor who restricts and/or obstructs the Judgment Creditor from taking possession of a property after issuance of a lawful decree. That the Respondents/Judgment debtors were directed to vacate from the Applicants'/Judgment creditors LR MWIMBI/MURUGI/1715 and 1716 vide the orders issued on 9th December, 2020 and 8th March, 2021 respectively. It is further submitted that the said orders were duly served upon the Respondents on 12th March, 2021 and 13th March, 2021 as evidenced by the Affidavit of service filed in court on 29th March, 2021. That the Respondents did not apply for the review of the said orders nor did they file any Appeal against those orders within the stipulated period as required by law.

16. It is further submitted by the Applicants that the Respondents have not offered any explanation as to why the court orders issued on 9th December, 2020 and 8th March, 2021 respectively were not complied with. The Applicants' counsel submitted that the Applicants/Judgment Creditors have exhibited a prima facie case to commit the Respondents/Judgment Debtors to jail for blatant disobedience of the said court orders. They urged the court to be guided by the provisions of Section 51 of the Civil Procedure Act and commit the Respondents to jail for a period of six (6) months. That the O.C.S. Chogoria Police Station be directed to arrest the Respondents and produce them before court for their committal to jail. That the said O.C.S. be further directed to put the Applicants in possession of L.R. MWIMBI/MURUGI/1715 and 1716 by removing, if necessary by force the Respondents and their family members from the suit parcels of land. The Applicants urged the court to allow the application herein, noting that the Respondents are hell bent in disobedience of the said court orders. That disobedience of court orders as experienced in the Republic of Kenya can no doubt plunge the country into anarchy and therefore the dignity of this court ought to be respected.

17. I have considered the application and the submissions herein. The Applicants herein contend that the orders of the court that were issued on 9th December, 2020 and 8th March, 2021 were disobeyed by the 1st and 3rd Plaintiffs/Respondents. The issue that calls for determination is whether the applicants are entitled to the orders sought herein.

18. The court has examined each of the two orders. In the order issued on 9th December, 2020, the court ordered as follows:

1. That Edwin Nyaga Mukatha be and is hereby allowed to proceed with matter as legal representative of Kinyua Mukatha the 1st Defendant herein who died on 21st October 2006 for the purpose of execution of court judgment herein and other related proceedings.

2. That the inhibition orders placed on Mwimbi/Murugi/1715 vide a court order in HCC No. 3 of 2001 and all cautions registered on Parcel No. Mwimbi/Murugi/1716 respectively be and are hereby vacated.

3. That the Plaintiffs be and are hereby ordered to give vacant possession to the defendants in parcel referred as Mwimbi/Murugi/1715 the property of the 1st defendant and Mwimbi/Murugi/1716 the property of the 2nd and 3rd defendants.

4. That the Plaintiffs be and are hereby ordered to be evicted from occupation and or any dealing whether physical possession or otherwise from parcels No. Mwimbi/Murugi/1715 and Mwimbi/Murugi/1716.

5. That the officer Commanding Chogoria Police Station be and is hereby ordered to provide security during eviction of the plaintiffs from suit land Mwimbi/Murugi/1715 and 1716 respectively.

6. That Beeline Auctioneers be and are hereby directed to execute the orders of the court.

7. That costs be and hereby awarded to the 2nd and 3rd Defendants/Applicants.

19. Similarly, in the order issued on **3rd March, 2021**, the court ordered that:

1. That the firm of M/S. Waklaw Advocates, be and is hereby allowed to come on record for the Applicants/Defendants and to act alongside the firm of M/s. Kiogora Mugambi & Co. Advocates, in the instant suit.

2. That the eviction orders issued to M/s. Beeline Auctioneers be and are hereby recalled and allocated to M/S. Quickline Auctioneers, in proper liaison with this Court's Deputy Registrar.

3. That the District Surveyor Meru South, be and is hereby directed to visit the suit Lands Mwimbi/Murugi/1715 and 1716 and its adjacent land parcels and identify and restore the boundaries as per the Registry Index Map (RIM) Sheet No. 18 Murugi Registration Section, for the purpose(s) of the execution of the eviction orders issued against the Respondents/Plaintiffs.

4. That costs shall be in the cause.

20. It is clear from the said orders that the Plaintiffs/Respondents were ordered to give vacant possession to the Defendants/Applicants herein of the property known as Parcel No. MWIMBI/MURUGI/1715 and 1716. The court further ordered that the Plaintiffs/Respondents be evicted from occupation, possession and or any dealing or otherwise from the said parcels of land. In the order issued on **8th March, 2021**, the court directed the District Surveyor, Meru South to visit the suit lands and adjacent land parcels and identify and restore the boundaries as per the Registry Index Map (R.I.M) sheet No.18 of Murugi Registration Section for purposes of the execution of the eviction orders issued against the Respondents/Plaintiffs.

21. I have also perused the Affidavit of service annexed to the affidavit in support of the application herein. It is not in dispute that the Respondents herein were duly served and accepted service of the said orders of court. Further, the application herein has not been opposed by the Respondents. The Respondents have not controverted the averments made by the Applicants herein. There is therefore no dispute that the orders were personally served on the Respondents.

22. The court will only punish for contempt if satisfied that the terms of the order were clear and unambiguous and the contemnor had proper notice of the terms of the order. In my view, the terms of the orders were very clear. The Respondents were required to give vacant possession of the suit properties to the Applicants or be evicted therefrom. The Respondents have not offered any explanation as to why they have not complied with the said court orders, despite the same having been served on them. From the evidence before me, I am satisfied that the Respondents have disobeyed the said court orders.

23. In *Trusted Society of Human Rights Alliance –vs- Cabinet Secretary for Devolution & Planning & 3 Others* [2017] eKLR, Mativo J, in a persuasive decision stated:

“If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and a civilized life in the society. It is for this purpose that courts are entrusted with the extra ordinary power of punishing those who indulge in acts whether inside or outside it which tend to undermine the authority and bring them in disrepute and disrespect by scandalizing them and obstructing them from discharging their duties without fear or favour. When the court exercises this power, it does so to uphold the majesty of the law and of the administration of justice. The foundation of the Judiciary is the trust and confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working the edifice of the judicial system gets eroded.”

24. Clearly, this court's orders still remain in force, hence I find no difficulty in finding that the Respondents were obliged to comply with the said orders.

25. In the case of *Econet Wireless Kenya Ltd –vs- Minister for information & Communication of Kenya & Another* [2005] 1 KLR 828, Ibrahim J (as he then was) stated:

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of court is upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void.”

26. In the case of Awadh –vs- Mambu (No. 2) No. 53 of 2004 (2004) KLR 458 it was stated as follows:

“It must be remembered that court orders must be obeyed at all times in order to maintain the rule of law and good order. This of course means that the authority and dignity of our courts must be upheld at all times and this differentiates civilized societies from those applying the law of the court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with contemnors.”

27. Also in the case of B –VS- Attorney General (2004) 1 KLR 431, Ojwang J (as he then was) held:

“The court does not, and ought not to be seen to make orders in vain, otherwise the court would be exposed to ridicule, and no agency of the constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.”

28. A court order is binding on the party against whom it is addressed and until set aside remains valid and is to be complied with. Willful and fragrant disobedience of court orders undermines the authority and dignity of the courts and must be dealt with firmly so that the court’s authority is not brought to disrepute.

29. In the result, and applying the above principles, I find that the Applicants have satisfied me that there was disobedience of the orders of court issued on 9th December, 2020 and 8th March, 2021 and I find the 1st and 3rd Plaintiffs/Respondents guilty of contempt.

Consequently, the notice of motion application dated 20th September, 2021 is allowed as prayed. I direct the Officer Commanding Police Station (OCS) Chogoria Police Station to arrest the 1st Respondent, MR. ALVIN MBAE and the 3rd Respondent, MR. WILSON MBAABU and produce them before this court for purposes of sentencing.

30. Costs of the application are awarded to the Applicants to be borne by the Respondents. It is so ordered.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 16TH DAY OF DECEMBER, 2021 IN THE PRESENCE OF:

C/A: Martha

Kirimi for Applicants

Wilson Mbaabu, 3rd Respondent present in person

N/A for 1st Respondent

C. K. YANO,

JUDGE.