



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC MISCELLANEOUS APPLICATION NO. E6 OF 2020

GIDEON MUOKI MWANIA.....PLAINTIFF

-VERSUS-

YUSUF TAWAKAL MOHAMUD.....RESPONDENT

RULING

This ruling is on the Notice of Motion dated 28th August, 2020.

The application which is by the Applicant by the name of Gideon Muoki Mwanja is brought under *Sections 1A, 1B, 3A* of the *Civil Procedure Act, Section 5 (1)* of the *Judicature Act, Order 51* of the *Civil Procedure Rules, Rules 81.4 of the England Civil Procedure (Amendment No. 2) Rules, 2012* and all other enabling provisions of the law seeks three orders namely;

2) That this Court be pleased to order the Respondent, Yussuf Tawakal Mohammed and his agents be committed to jail for such period as deemed just and sufficient and such further orders as the Court may deem necessary for contempt of status quo orders issued on 6th May, by the Court in ELC Case No. 742 of 2017.

3) That the Court compels the Respondent to maintain the status quo by vacating the premises known as plot no. 269/RESIDENTIAL OLE KASASI TRADING CENTRE until the suit filed by the Applicant is heard and determined.

(1) That the Director of the Respondent and their agents do pay costs of this Application personally.

The application is supported by an affidavit sworn by the Applicant in which he deposes that the Respondent was on 6th March, 2018 ordered by this Court to maintain the status quo in PLOT NO. 269 RESIDENTIAL OLE KASASI TRADING CENTRE.

The status quo was that the Applicant was in actual possession of a house which he had built on the suit property.

On 27th August, 2020, the Respondent trespassed into the suit land by destroying the gate and forcibly occupying the house that the Applicant had constructed. On the following day, the Applicant reported the matter at Rongai Police Station and it is pending under investigation.

Annexed to the affidavit are the following;

(i) Pleadings and Order in ELC 742/2017.

(ii) Approval letter for construction of a residential house on plot No. 269 RESIDENTIAL OLE KASASI TRADING CENTRE issued by the County Council of Kajiado.

(iii) Receipt dated 29th October, 2009 issued by the County Council of Kajiado to the Applicant.

(iv) Building plan for a House on Plot No. 269 RESIDENTIAL OLE KASASI TRADING CENTRE.

(v) 2 pictures showing a complete house.

The application is opposed by the Respondent who has sworn a replying affidavit dated 7th October, 2021.

In the affidavit the Respondent admits that there is indeed an order for status quo but adds that the suit in which the order was made was

transferred to Ngong Magistrate's Court.

Later on, a survey was carried out on the orders of the Magistrate's Court which established that the Respondent owned plot No. 296 which plot No. 269 belonged to a different person.

It is the Respondent's case that he is in possession of LR. 296 and not 269.

Attached to the affidavit is a site report dated 12th July, 2018 showing that the two plot numbers 269 and 296 are distinct.

I have carefully considered the application in its entirety including the affidavits and annexures and I find that it has no merit for the following reasons;

Firstly, it is trite law that an application to commit a Respondent to jail must be proved beyond reasonable doubt. This standard of proof has not been achieved in this case because it is clear that there are two distinct plots and not one as previously thought.

Secondly, the suit having been transferred to the Lower Court, it means that this Court has no jurisdiction.

For the above reasons, I dismiss the application dated 28th August, 2020 with costs to the Respondent.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 7TH DAY OF DECEMBER, 2021.

M.N. GICHERU

JUDGE