



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MAKUENI**

**HIGH COURT SUCCESSION CAUSE NO. 121 OF 2017**

**ESTATE OF KYUNGU YUMBYA NGUMI (DECEASED)**

**NEWTON MUTISO KYUNGU..... PETITIONER**

**-VERSUS-**

**BENSON MULINGE YUMBYA..... 1<sup>ST</sup> OBJECTOR**

**ESTHER NDUNGE KIETI.....2<sup>ND</sup> OBJECTOR**

**RULING**

1. A summons dated 3<sup>rd</sup> May 2016 was filed by Benson Mulinge Yumbya through counsel M/s PM Mutuku & company seeking orders that the respondent Newton Mutiso Kyungu (*the petitioner herein*) be restrained from alienating and/or disposing plot No. KALAMA/IIUNI/833 until the succession cause herein is finalized.

2. On 28<sup>th</sup> September 2017 this court delivered a ruling on that application, the main order being that the status quo prevailing as at the time the application was filed, be maintained until the matter herein is heard and determined.

3. The ruling of this court did not specify the actual details of that status quo. However, under paragraph 9 of the ruling, it is stated by the court as follows –

***9. “The applicant avers that there is a prohibitory order to stop sale/alienation of the subject matter. The respondent does not deny the same.”***

4. In my view therefore, the status quo was a bar of alienation or sale of the subject land KALAMA/IIUNI/833, and the court issued orders maintaining that the land should not be sold or alienated.

5. The 1<sup>st</sup> objector has now come to this court with another application by way of Notice of Motion dated 12<sup>th</sup> January 2018 seeking that orders of contempt be issued against Newton Mutiso Kyungu for disobeying the orders of this court pronounced in the ruling dated 28<sup>th</sup> September 2017 and his committal to civil jail for six (6) months, on the grounds that the respondent was now not disposing of the land but destroying trees on the land which application is supported by an affidavit of the applicant Benson Mulinge Yumbya, and is opposed through an affidavit sworn by the respondent Newton Mutiso Kyungu on 11<sup>th</sup> March 2018.

6. Counsel for the 1<sup>st</sup> objector filed written submissions, while counsel for the respondent elected to rely on the replying affidavit.

7. It has to be mentioned here that one of the parties herein Esther Ndunge Kieti is said to have died and her survivors Nason Nyamasyo Kieti, Annah Wayua Kivunzya, Jeniffer Mutinda Kieti, Florence Kalondu Kieti, and Samson Mwanthi Kieti swore an affidavit on 26/10/2020 stating that the late who was listed herein as one of the objectors, will not pursue the objection thus her objection if any be deemed as withdrawn.

8. Having considered the application, affidavits and other documents filed, as well as the written submissions of the objector’s counsel, I come to the conclusion that this application for contempt cannot succeed.

9. The first reason why the application cannot succeed, is that the initial complaint of the objector was against sale/disposal of the subject land, and the court ordered maintenance of the status quo, thus violation of the court’s orders could only relate to sale or disposal of the land. There being no allegation that the respondent was selling or had sold the subject land, the objector was not entitled to come to court alleging contempt. Against the respondents.

10. Secondly, the court order for maintenance of status quo did not mean that beneficiaries could not occupy or use or harvest the produce of the land, including trees. Thus since there is no complaint brought to this court relating to occupation or use of the land, for determination mere use or harvest from the land cannot raise an issue of contempt.

11. Thirdly, what the objector has said all along is that there is a case on the same land pending in the Environment & Land Court. In my view, the issues of use and occupation of that land, at the moment, should be raised in the Environment and Land court, not in this succession court.

12. Consequently, I find no merits in the application and dismiss the same. Parties will bear their respective costs of the application.

**DELIVERED, SIGNED & DATED THIS 1ST DAY OF DECEMBER, 2021, IN OPEN COURT AT MAKUENI.**

.....

**GEORGE DULU**

**JUDGE**