



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NUMBER 610 OF 2006

IN THE MATTER OF THE ESTATE OF DANSON NGOTHO WAWERU (DECEASED)

VICTOR NGOTHO

(Legal Representative of the Estate

of the Late Stephen Waweru Ngotho).....PETITIONER

VERSUS

MARTHA WAIRIMU NGOTHO.....1ST RESPONDENT

DOUGLAS KAMAU NGOTHO.....2ND RESPONDENT

FRANCIS WARUIRU NGOTHO.....3RD RESPONDENT

JOHN NHEHIA NGOTHO.....4TH RESPONDENT

RULING

1. The application before Court is dated 28/9/18. The orders sought are;

a) Spent

b) THAT the Respondent herein be cited for contempt of court and be punished accordingly by being detained in prison for six (6) months.

c) THAT the Deputy Registrar of this Honourable court does sign the mutation forms, application for consent by the land board and transfer documents for the parcel of land measuring 2.7 acres to be excised from the property known as Nyandarua/Olkalou West/1509.

2. The same is anchored on the affidavit of Victor Ngotho Waweru and on grounds;

1. THAT the High Court issued Orders in this matter on 18th July 2018 and the same have been in force since then.

2. THAT the said Orders were that the Applicant be at liberty to engage a surveyor to excise a portion of land that belongs to his deceased father out of Nyandarua/Olkalou West/1509 at their own expense.

3. THAT the Respondents look a survey who measured a 2.7 acres portion and erected beacons therein, but the 2nd Respondent has failed to obey the said Order by refusing to sign the transfer.

4. THAT the above mentioned Court Order together with the Penal Notice of consequences were served upon the Respondent.

5. THAT the Respondents have pulled down, neglected and/or refused to accept the beacon/pegs as set up by a qualified survey thereby stalling the process for the subdivision, in disobedience of the Court order.

6. THAT the Respondents actions are in clear defiance of the Orders of this Honourable Court hence demeaning the

integrity and honour of the Court.

7. THAT the Respondents should therefore be punished by being committed to jail for a period of six (6) months.

3. The application is opposed and in a replying affidavit Douglas Kamau Ngotho states that they were never invited to the excision of the 2.7 acres by the surveyor who to date is unknown to the respondent. The alleged surveyor has not contacted any of the respondents.

4. It is urged that the alleged forms have never been served to the respondents and they refused to sign.

5. I have considered the application at hand. By a consent of the parties recorded on 18/7/18, it was ordered that the applicant herein be at liberty to engage a surveyor to excise a portion of land that belongs to his deceased father out of Nyandarua/Olkalou West/1509 at their own expense.

6. The respondents are now cited for contempt ostensibly for failing to co-operate to give effect to this order.

7. It is also sought that the Deputy Registrar of this Court executes the necessary transfer documents for the excision and transfer of the 2.7 acres.

8. The respondents deny any non co-operation and state that they were never invited for the exercise and neither has the alleged surveyor contacted them.

9. I have applied my mind to this application. There is no evidence of a structured invite of the respondents to participate in the survey work on a stated specific day. No iota of evidence is given on any such contact. Neither is there evidence of presentation of documents for signature and which the respondents failed to execute.

10. In those circumstances, I find that the alleged contempt is not proved, neither the refusal to sign the alleged forms.

11. The orders of court must be obeyed by all unless set aside or otherwise varied by a court of competent jurisdiction.

12. To have a structured way of carrying out the excision exercise, the court now requires of the parties to state before court for the record;

1. The agreed surveyor(s)

2. The specific date of the exercise.

3. The specific persons needed to sign the transfer documents.

4. Any other logistics incidental to the exercise.

13. Such a structured way to be implemented without fail and any deviation therefrom shall attract penal consequences through contempt proceedings.

14. The application dated 28/9/18 is dismissed. Each party to bear its own costs.

Dated and Signed at Nakuru this 12th day of June, 2018.

A. K. NDUNG'U

JUDGE