



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 219 OF 2016

DAVID KAZUNGU MURAMBA (Suing through the power
of Attorney of **PHOEBE NZALE KAZUNGU**.....1ST PLAINTIFF
ISAAC KIPONDA CHOME.....2ND PLAINTIFF
NOEL BAHA NDORO.....3RD PLAINTIFF
RICHARD BARAKA NDORO (suing as the Administrators of
The Estate of STEVEN KATANA NDORO.....4TH PLAINTIFF

VERSUS

PETER MBUGUA KIMANI.....1ST DEFENDANT
VINGI PROPERTIES LIMITED.....2ND DEFENDANT

RULING

1. I have before me for determination a Chamber Summons application dated 12th February 2019. By the said application, Vigingi Properties Ltd(the 2nd Defendant) prays for an order to be made against Issack Kiponda Chome(the 2nd Plaintiff) committing him to prison for such a period as the Court may deem fit and just for disobeying a Consent Order made herein on 5th April 2018.

2. The application which is supported by an affidavit sworn by the 2nd Defendant's director Moses Mathew Osoro is premised inter alia on the grounds that:-

i) On 5th April 2018 a Consent Order was recorded herein requiring all the parties to observe the Status quo.

ii) In November 2018 the 2nd Plaintiff commenced construction thereby violating the said consent order.

iii) The 2nd Plaintiff has continued to build, develop and carry out construction on the suit premises in total disregard of the said Court Order.

3. The 2nd Plaintiff is however opposed to the grant of the orders sought herein. In a Replying Affidavit sworn and filed herein on 26th February 2019, Issac Kiponda Chome avers that he resides in the suit properties and that in his compound his adult sons have also constructed their houses in accordance with their culture.

4. The 2nd Plaintiff avers that his son George Kazungu Chome had started constructing a house in 2014 before this suit was filed and that the same stalled along the way. The 2nd Plaintiff asserts that as at the time the status quo orders were made in April 2018, George's house had been fully constructed, save for the fixing of the roofing, windows and doors.

5. The 2nd Plaintiff avers that during the Christmas holidays, his son fixed the roofing, windows and doors so as to occupy the same. He asserts that the same was done in good faith and that it did not amount to construction.

6. The 2nd Plaintiff accuses the 2nd Defendant of being the one in breach of the Court orders after its directors sanctioned the removal of the 1st Defendant's roof, doors and windows. He asserts that the present application is frivolous and only meant to delay the just and expedient disposal of the matter and urges the Court to dismiss the same.

7. I have perused and considered the application and the response thereto. The 1st Defendant supported the application by the 2nd Defendant. The 1st, 3rd and 4th Plaintiffs did not however take any position in the application.

8. The genesis of this application is an order made herein on 5th April 2018. On that date two applications came up for hearing. The first was the Plaintiffs' application dated 24th August 2016 seeking temporary orders of injunction to restrain the Defendant from carrying out any developments, trespassing upon or cultivating the suitland pending the hearing and determination of the suit.

9. The second application dated 30th October 2017 had been filed by the 2nd Defendant also seeking to restrain the Plaintiffs by way of injunction from continuing with any permanent construction, fencing, selling, transferring or obstructing the 2nd Defendant's right of ingress into and/or out of its property.

10. Those two applications were by the consent of the parties compromised with an order that the status quo obtaining as of the said date be maintained pending the hearing and determination of this suit.

11. In his response to the application seeking his committal to jail for contempt, the 2nd Plaintiff does not deny knowledge of the said orders. He avers at paragraph 5 of his Replying Affidavit as follows:-

“5. That I am aware of the Orders made on 5-4-2018 that required (us) to maintain status quo, of which I have maintained as the status then was that was (sic) no construction at all.”

12. Despite such knowledge he tacitly admits that a building under construction within his compound which had earlier stalled was “finished” to make it habitable by the construction of the roof, fixing of windows and doors. He attributes the actions of fixing the roofing, doors and windows without any evidence in that regard to one of his sons and purports that what happened did not amount to construction.

13. As was stated by the Court of Appeal in ***Shimmers Plaza Ltd –vs- National Bank of Kenya Ltd (2015)eKLR:-***

“ ‘Status quo’ in normal English Parlance means the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events. . All it means was that everything was to remain as it was as at the time the order was given. If there was any transaction that was going on in respect of the land in question, it had to freeze and await the discharging of the Court Order.”

14. As has been stated in numerous Court decisions, it is essential for the maintenance of the rule of law and good order that the authority and dignity of our Courts is upheld at all times. Therefore when a Court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the status takes effect, must be maintained.

15. In the premises herein I am satisfied that the conduct of the Plaintiff herein in proceeding with construction in the suit property, whether by himself or through his servants, agents and proxies amounted to conduct that defies the authority and dignity of this Court. Because such conduct undermined the administration of justice, the 2nd Plaintiff shall be punished for the same.

16. Before he is punished however, I think it is fair that this Court gives him a chance for mitigation. Accordingly, the 2nd Defendant's application is hereby allowed with an order that the 2nd Plaintiff does appear in this Court on 1st July 2020 for purposes of mitigation subsequent to which this Court shall pass an appropriate sentence.

17. The 2nd Defendant shall have the costs of this application in any event.

Dated, signed and delivered at Malindi this 13th day of May, 2020.

J.O. OLOLA

JUDGE