



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL MISC APPL. NO. 448 OF 2015**

**APOLLO KIARIE NGANGA (Suing on behalf**

**Of JOSEPH NGANGA KIARIE(Deceased).....APPLICANT**

**- V E R S U S -**

**COUNTY SECRETARY**

**NAIROBI CITY COUNTY.....RESPONDENT**

**RULING**

1. Apollo Kiarie Ng'ang'a, the applicant herein took out the motion dated 15.7.2016 in which he sought for *inter alia*:

*i. An order directing the county secretary, Nairobi City County the respondent herein to point out the beacons of plot no. 320. Kariobangi Light Industries situate at Kariobangi to the applicant.*

*ii. An order do issue an order directing the respondent to hand over vacant possession of plot no. 320 Kariobangi Light Industries situate at Kariobangi to the applicant.*

*iii. Costs of the motion.*

2. The motion is supported by two affidavits sworn by the applicant.

When served, the respondent filed the replying affidavit of Samuel M. Karani to oppose the motion. When the motion came up for interpartes hearing learned counsels appearing in the matter agreed in principle to dispose the motion by written submissions.

3. I have considered the grounds stated on the face of the motion and the facts deponed in the affidavit filed in support and against the application. I have also considered the rival written submissions. I have already set out the kind of orders the applicant is seeking in the motion. It is the submission of the applicant that he filed a suit before the Chief Magistrate's Court, Milimani Commercial Court, Nairobi, against the respondent seeking for orders directing the respondent to issue the applicant with beacon certificate over plot no. 320 Kariobangi Light Industries. The aforesaid orders were issued on 10.7.2015 but were not complied with prompting the applicant to take out the motion dated 15.7.2016, the subject matter of this ruling. It is also argued that the failure by the respondent to comply with the said orders necessitated the applicant to seek for leave to commence contempt of court proceedings against the

respondent. It is said that leave to commence contempt proceedings was obtained on 17.3.2016.

4. The applicant aver that it is not in dispute that the respondent issued the applicant with a certified copy of the beacon certificate over plot no. 320 of Kariobangi Light Industries. It is stated that the beacon certificates indicate that the beacons were shown to the applicant's surveyors, something the applicant deny. It is for this reason that the applicant is saying that the respondent is regarded as being in disobedience of the court order. It is also stated by the applicant that the respondents are alleging that the beacons were shown to the late Joseph Nganga, the father of the applicant. The applicant urged this court to issue orders directing the respondent to give vacant possession of the suit premises.

5. The respondent vehemently opposed the motion stating that he complied with the court order by given the applicant a certified copy of the beacon certificate.

6. After a careful consideration of the material presented to this court, I have come to the following conclusion in this matter: First, it is not in dispute that the respondent was ordered to supply the applicant with a beacon certificate in respect of plot no. 320 Kariobangi Light Industries.

Secondly, that the parties are in agreement that the respondent supplied a certified copy of the beacon certificate as ordered by the court.

Thirdly, that the respondent appears to have issued a conditional beacon certificate which did not impress the applicant hence the filing of the contempt proceedings.

Fourthly, that the parties recorded a consent order settling the question of issuance of the beacon certificate. In fact the court record shows that on 26.7.2016 the question of non-compliance of the court order was settled by the recording of a consent order. I have carefully perused the record and the material presented before this court and I am satisfied that the respondent purged the alleged contempt thus culminating the recording of the consent order on 26.7.2016. Therefore, the applicant's application seeking for vacant possession and seeking for orders directing the respondent to point out beacons over the suit property is without any justification. For the avoidance of doubt i.e there is no order requiring the respondent to deliver vacant possession or to point out the beacon in favour of the applicant. The order sought in my view lacks any legal foundation. The application in my view is vexatious and an abuse of the court process.

7. In the end the motion lack merit. It is dismissed in its entirety with costs to the appellant/respondent.

Dated, Signed and Delivered in open court this 24<sup>th</sup> day of March, 2017.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant