



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
SUCCESSION CAUSE NO. 220 OF 2001
IN THE MATTER OF THE ESTATE OF IKIUGU KIRIUNGI – DECEASED

MICHAEL MURETI.....APPLICANT

AND

ALEX MURIIRA MARETE.....RESPONDENT

R U L I N G

1. Before me is a Summons dated 12th April, 2017 expressed to be brought under Order 40 Rule 3 of the Civil Procedure Rules and Rule 45(2) of the Law of Succession Act Cap 160 of the Laws of Kenya. The Summons seeks the committal of the Respondent to civil jail for a period not exceeding 6 months for contempt of the orders made on 17th March, 2017. In the alternative, the application seeks that the Respondent be fined Kshs.10,000/= or be jailed for a period of 1 year for intermeddling with the estate of the deceased.

2. The grounds upon which the application was premised were contained in the body of the Summons and the Supporting Affidavit of Michael Mureti, the Applicant, sworn on 12th April, 2017. These are to the effect that; the grant in this matter has been confirmed but yet to be implemented; that the Respondent had on the 27th March, 2017 been restrained from constructing or in any way interfering with parcel No. Ntima/Ntakira/1665 pending the hearing of an application then pending; that the order was duly served upon the Respondent and an Affidavit of service duly filed; that the said order was later confirmed at the inter-partes hearing. That despite as aforesaid, the Respondent disobeyed the said order and has continued to construct on the subject property.

3. When the application came up for hearing on 5th June, 2017, the Court found that the same had been properly served upon the Respondent allowed the same to be argued ex-parte. Mr Ayub Anampiu, learned Counsel for the Applicant referred the Court to the provisions of the Contempt of Court Act No. 46 of 2016 and submitted that the said Act is supplemental to the provisions of Order 40 Rule 3 of the Civil Procedure Rules under which the application had been brought. He relied on the averments of his client in the Supporting Affidavit and urged the Court to allow the application as it was undefended.

4. The jurisdiction of this Court to punish for contempt of court emanates from two sources, **section 5 of the Contempt of Court Act No. 46 of 2016** and **Order 40 Rule 3 of the Civil Procedure Rules**. **Section 5 of the Contempt of Court Act** provides:-

“Sec. 5. Every superior court shall have power to –

(a) punish for contempt of court on the face of the court;

(b) punish for contempt of court; and

(c) uphold the dignity and authority of subordinate courts”.

While **Order 40 Rule 3 of the Civil Procedure Rules, 2010** provides:-

“40 3(1). In cases of disobedience, or of breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release.

These two jurisdictions complement each other by virtue of **section 38 of the Contempt of Court Act**. It should be noted here that the **Contempt of Court Act No. 46 of 2016** did away with the stringent procedural requirements hitherto applicable under the English law by repealing **section 5 of the Judicature Act**. Under **section 4 of the Contempt of Court Act**, contempt of court has been defined as:-

“4 (1) Contempt of court includes –

a) civil contempt which means wilful disobedience of any judgment, decree direction, order or other process of a court or wilful breach of an undertaking given to a court”.

The basis for punishing for contempt of court is well known. It is meant to uphold the rule of law (*African Management Communication International v. Joseph Mathenge Mugo [2013] eKLR*), it is not meant to placate the judicial officer concerned or protect the court but to uphold the administration of justice (*AG v. Leveller Magazine Ltd [1979] AC 440, Sam Nyamweya & 3 others v. Kenya Premier League Limited & 2 others [2015] Eklr*). The power to punish for contempt is a power given to the court to safeguard and protect the citizen’s rights and freedoms (*Board of Governors Moi High School Kabarak v. Malcolm Bell & Another, SC Pet. Nos. 6&7 of 2013*).

5. Having found that this Court has jurisdiction to punish for contempt, is the Respondent in contempt of court? It was deponed that this Court made an Order (Onginjo J) on 27th March, 2017 whereby the Respondent was restrained from constructing or interfering with LR. NTIMA/NTAKIRA/1665 pending the hearing of that application; that the order was extracted and served upon the Respondent but he continued with the construction. That at the time the Applicant obtained and served the order, the Respondent only fenced the property with iron sheets; that by the time the Applicant returned to Court with the present application, the Respondent had continued with construction and was excavating the foundation. The Applicant exhibited photographs to support his claims. All these depositions were neither denied nor controverted. They therefore remain unchallenged and therefore the truth.

6. I have on my part perused the record. I have seen the order made on 27th March, 2017 by Onginjo J. The same was extracted on 29th March, 2017. There is on record the Affidavit of service of Max Muema sworn on 31st March, 2017 wherein he deposed that he served the Respondent with, amongst others, the said order on 30th March, 2017 at Tuskys Supermarket within Buruburu shopping centre. I have seen photographs annexed to the application of 23rd March, 2017 before the order was made. They only show that materials had been poured on site and the property fenced. The photographs annexed to the current application show deep excavations that exhibit accelerated construction. To my mind there has been willful disobedience of the order of 27th March, 2017.

7. In view of the foregoing, I find the application to be meritorious. The Respondent is in contempt of this Court and is convicted accordingly. Warrants of arrest are hereby issued for the arrest of ALEX MURIIRA MARETE. The OCPD Imenti North is hereby directed to execute the warrants and present the said ALEX MURIIRA MARETE in this Court as soon as possible for sentencing.

It is so ordered.

DATED and DELIVERED at Meru this 13TH day of June, 2017.

MABEYA

JUDGE

13/06/2017