



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**CASE No. 214 OF 2012**

**PRAIRIE CO-OPERATIVE SOCIETY LIMITED.....PLAINTIFF**

**VERSUS**

**KURIA GITONGA..... 1<sup>ST</sup> DEFENDANT**

**JOHN MUTHEE NGUNJIRI ..... 2<sup>ND</sup> DEFENDANT**

**COMMISSIONER OF LANDS.....3<sup>RD</sup> DEFENDANT**

**DIRECTOR OF SURVEY ..... 4<sup>TH</sup> DEFENDANT**

**REGISTRAR OF TITLES .....5<sup>TH</sup> DEFENDANT**

**HON. ATTORNEY GENERAL .....6<sup>TH</sup> DEFENDANT**

**RUKIMA ESTATE LIMITED .....7<sup>TH</sup> DEFENDANT**

**ONESMUS KIMANI NGUNJIRI .....8<sup>TH</sup> DEFENDANT**

**RULING**

1. By Notice of Motion dated 25<sup>th</sup> October 2019, the 7<sup>th</sup> and 8<sup>th</sup> defendants seek the following orders:

1. *Spent.*

2. *Spent*

3. *That the court be pleased to find that the plaintiff/respondent herein is in breach and or contempt of court by disobeying the orders of the court issued on 18<sup>th</sup> October 2011 and proceed to punish the plaintiff/respondent for the said contempt of court as the court may deem appropriate.*

4. *That the O.C.S Lanet do provide security and ensure that the plaintiff/respondent and or their agents herein do not develop and or further develop the suit land whatsoever.*

5. *That costs of this application be provided for.*

2. The application is supported by an affidavit sworn by the 8<sup>th</sup> defendant Hon. Onesmus Kimani Ngunjiri who also describes himself as a director of the 7<sup>th</sup> defendant. He deposed that according to the further amended plaint herein, the subject matter of this suit is title No. LR No. 4730/45 (Originally No. 4730/6/57) I. R 10860. He added that the applicants are the owners of the suit properties known as LR No. 21352, 21353, 21354, 21760, 21761, 21765, 21766, 21767, 21768, 21769 and 21770 being sub-divisions of LR No. 4730/42 and LR No. 4730/6/R. He further deposed that the applicants do not have any interest on LR No. 4730/45 (Originally No. 4730/6/57) I. R 10860 and that on 18<sup>th</sup> November 2011, counsels for the parties appeared before the court and agreed to maintain status quo of the suit properties. That despite those orders which were made by consent, the plaintiff/respondent disregarded the orders by entering the suit properties through its agents on 24<sup>th</sup> October 2019 and cultivating, putting up fences among other interferences.

3. The plaintiff opposed the application through a replying affidavit sworn by Titus Kiragu who described himself as its secretary. He

deposed that the orders of status quo made on 18<sup>th</sup> October 2011 are in respect of a parcel of land known as LR No. 22909 and added that the plaintiff has maintained status quo as was ordered. He further stated that on 19<sup>th</sup> October 2019, members of the plaintiff fenced their plots but on 2<sup>nd</sup> November 2019 the applicants together with hired hands descended on LR No. 4730/45 and destroyed the fence.

4. The application was canvassed through written submissions which the applicants and the plaintiff duly filed. Counsel for the 2<sup>nd</sup> defendant orally supported the application but did not file any response or submissions.

5. I have considered the application, the affidavits and the submissions. The record shows that the order that is said to have been disobeyed was made on 18<sup>th</sup> October 2011 by M.J.A Emukule J in the presence of counsel for the plaintiff. The relevant part of the order reads:

***Status quo be maintained pending hearing and determination of this suit.***

6. It is plain enough that every person against whom an order is made by court of competent jurisdiction has a duty to obey it unless and until it is discharged. Therefore, an allegation of contempt of court is a serious matter since if proven, the liberty and property of the contemnor are at risk. It is for that reason that the standard of proof in contempt proceedings is higher than the usual one in civil proceedings of proof on a balance of probabilities. See **Mutitika vs. Baharini Farm Limited [1985] KLR 229.**

7. Court orders are not issued in vain. The Court of Appeal rendered itself in **Fred Matiang'i the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government v Miguna Miguna & 4 others [2018] eKLR** as follows:

***When courts issue orders, they do so not as suggestions or pleas to the persons at whom they are directed. Court orders issue ex cathedra, are compulsive, peremptory and expressly binding. It is not for any party; be he high or low, weak or mighty and quite regardless of his status or standing in society, to decide whether or not to obey; to choose which to obey and which to ignore or to negotiate the manner of his compliance. ...***

8. This court like any other court has inherent jurisdiction to ensure that judicial authority, dignity and the rule of law are upheld at all times. The Court of Appeal stated in **Woburn Estate Limited v Margaret Bashforth [2016] eKLR** as follows:

***The jurisdiction of the High Court (or any other court for that matter) to punish for the violation of its orders cannot be in question. Apart from section 5 (1) of the Judicature Act that vests in the High Court the power, like those of the High Court of Justice in England, to punish any party who violates its orders, the court, by virtue only of being a court has inherent powers to make sure its process is not abused and its authority and dignity is upheld at all times. ...***

9. More recently, the Court of Appeal stated as follows in **Kiru Tea Factory Company Ltd v Stephen Maina Githiga & 14 others [2019] eKLR:**

***25. The cases of Mutitika v Baharini Farm (1982-88) I KAR 863, Hadkinson v Hadkinson (1952) All ER 567, Johnson v Grant (1923) SC 7890 and Christine Wangari Gachege v Elizabeth Wanjiru Evans, and 11 others, Civil Application No. 33 of 2013, are all to the effect that a person who knowing of the existence of an order of injunction or stay but willfully does an act that violates the terms of the injunction or stay is liable to be committed for contempt; that a party directed by an order of court to do or to refrain from doing any act must comply with the direction until it is discharged, irrespective of that party's view or opinion over the order; that contempt of court proceedings are intended not to protect personal dignity of the individual judge or the private rights of any litigant, but are meant to protect the fundamental supremacy of the law and the rule of law; and that leave to commence contempt of court proceedings is no longer required in view of the 1999 Civil Procedure Rules of England and the Civil Procedure (Amendment No.2) Rules, 2012 (of England).***

10. The disobedience the applicants accuse the plaintiff of is that it entered the suit properties through its agents on 24<sup>th</sup> October 2019 and started cultivating, putting up fences among other interferences. The respondent has insisted that it has not disobeyed the order. There is quite some debate between the parties as to what exactly constitutes the suit property and whether the respondent's actions in the circumstances were on the suit properties and therefore in disobedience of the order. I too have encountered difficulties in that regard. The difficulties are compounded by the fact that the orders under reference were not made by me but by another judge over 8 years ago. The order did not specifically state the property that it was in respect of. The applicants maintain that their parcels in respect of which they have lodged a counterclaim are sub-divisions of LR No. 4730/42 and LR No. 4730/6/R and that they have no interest on LR No. 4730/45 which is the property in the plaint. I am thus unable to ascertain without any doubt what the parties were supposed to do or to refrain from doing. For that reason, I cannot tell whether there has been disobedience. I am not persuaded that the standard of proof required in contempt proceedings has been met. It follows therefore that prayer 4 of the application cannot also issue.

11. In the result, Notice of Motion dated 25<sup>th</sup> October 2019 is dismissed. Costs in the cause. Parties are encouraged to get to the root of the dispute by setting down the suit for hearing.

12. This ruling is delivered remotely through video conference and e-mail pursuant to the Honourable Chief Justice's "Practice Directions for the Protection of Judges, Judicial Officers, Judiciary Staff, other Court Users and the General Public from the Risks Associated with the Global Corona Virus Pandemic" (Gazette Notice No. 3137 published in the Kenya Gazette Vol. CXXII—No. 67 of 17<sup>th</sup> April, 2020).

**Dated, signed and delivered at Nakuru this 4<sup>th</sup> day of June 2020.**

**D. O. OHUNGO**

**JUDGE**