



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT KISII

CASE NO. 175 OF 2015

JOSEPH LOKODI TELEU (SECRETARY)

Suing on behalf of Trans Mara Community Development Project PLAINTIFF

VERSUS

JONATHA PAAPAI 1ST DEFENDANT

GRACE NAIGURAI 2ND DEFENDANT

WILSON SUYA 3RD DEFENDANT

JOSHUA KIPNGETICH KURUI (Surveyor Transmara) 4TH DEFENDANT

HON. ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. The plaintiff herein Joseph Lekodi Teleu (Secretary) suing on behalf of Transmara Community Development Project filed a Notice of motion dated 15th July 2015 pursuant to Order 40 Rule 1 and 2 of the Civil Procedure Rules and Sections 1A, B, 3A, 63 (e) of the Civil Procedure Act seeking interlia the following orders:-

(a) That this honourable court be pleased to make an order to maintain the caution which was placed on the 22nd day of April 2015 on land parcel No. Transmara/Poroko/39 (hereinafter also known as suit property) pending the hearing and determination of this application.

(b) That the honourable court be pleased to grant a restriction on suit property pending the hearing and determination of this suit.

(c) That the defendants be restrained from assuming power and management of Transmara Community Development Project (TMD) pending the hearing and determination of this suit.

(d) The defendants/respondents be restrained from breaking the padlocks of the cupboards and offices of Transmara Community Development Project until the suit is heard and determined.

The above prayers were premised on grounds set out on the face of the application and the affidavit sworn

in support by the plaintiff.

2. The application was placed before **Okong'o J.** on 17th July 2015 and upon perusal certified the same urgent and granted an order of inhibition, inhibiting the registration of any further or other dealing with the suit property pending the hearing of the application *inter partes* and also directed that the above application be served upon the defendants. From the record, a formal order endorsed with a penal notice was extracted on 23rd July 2015 and was duly signed by the Deputy Registrar and sealed with the seal of the court. The said order inhibited the defendant from registration of any further or other dealing with on the suit property pending the hearing of the application *inter partes*.

3. The plaintiff has filed the Notice of Motion dated 31st July 2015 which is the subject of this ruling where he alleges the 1st, 2nd, 3rd and 4th respondents including the OCS Kilgoris Police Station have disobeyed the order issued on 23rd July 2015 and the application seeks an order for the arrest and committal to jail of the alleged contemnors for a duration not exceeding six (6) months or in the alternative, the attachment of property of the named contemnors for disobeying the said court order. The application is supported by a supporting affidavit sworn by the plaintiff where he states that the above said order endorsed with a penal notice was served on the defendants and their counsel and that notwithstanding, the defendants and their agents including the OCS and the chief have in flagrant disobedience of the court order entered the suit premises, locked the gate of Transmara Community Development Project, damaged the financial records of the institution and further continued to mismanage the same.

4. The plaintiff further deposes that the respondents despite being served with the court order have refused to obey the said order and instead have acted arbitrarily and in contravention of the court order. The plaintiff avers the respondents acts of disobedience are deliberate and intentional and that the same warrant to be punished by the court to safeguard the respect and the dignity of the court. Court orders are intended to be obeyed and disobedience ought to be punished so as to uphold the dignity and integrity of the court.

5. The plaintiff's application was opposed by the defendants. The 1st and 2nd defendants have jointly sworn a replying affidavit dated 13th November 2015 and acknowledge indeed the court issued the order on 23rd July 2015 but aver that the order only inhibited the registration of further or other dealings with the suit property pending hearing of the application *inter partes*. The 1st and 2nd defendant further deposed that they are the current officials of Transmara Community Development and as such officials, the order issued by the court on 23rd July 2015 did not bar them from carrying out the duties assigned to them under the Constitution of the organization and they cannot therefore be held to be in contempt of the court order.

6. The 1st and 2nd defendants averred that they did not cause any transaction and/or dealing to be registered against the suit property. The court order only barred the registration of any dealings against the suit property and the defendants had not effected any registration since the order was issued so as to be adjudged to have disobeyed the order. The 1st and 2nd defendants thus contend that there was no proof that they had disobeyed the court order and aver the plaintiff's application is frivolous and unmerited.

7. The chief of Poroko location one Joseph Oladara Soya has also sworn an affidavit in opposition to the application by the plaintiff dated 17th November 2015. He has denied that the order dated 23rd July 2015 together with the application dated 15th July 2015 was ever served upon him and also denied that the said order had been violated. He has further stated that the plaintiff herein was a former official of a school operated by the Transmara Community Development Project and thus he (plaintiff) is not an official of the said community development project and neither is he authorized to sue on its behalf.

8. The chief further stated that in fact the 1st defendant is the chairman Transmara Community Development Project while the 2nd defendant is the Chief Executive Officer and in the premises the plaintiff does not have sufficient *locus standi* to commence and sustain these proceedings for and on

behalf of the Transmara Community Development Project. Lastly, he has stated that in as far as the application dated 31st July 2015 is concerned, the court order issued on 23rd July 2015 was never served upon the 3rd and 4th defendants as alleged or at all and consequently the question of disobedience of the order cannot arise.

9. The application was canvassed by way of written submissions. I have considered the plaintiff's application together with the affidavit filed in support thereof and the replying affidavits in opposition and I have reviewed and considered the submissions filed by the parties. The issue to be determined is whether the plaintiff has proved to the required standard that the respondents have disobeyed the order issued on 23rd July 2015 to warrant the court to hold them in contempt and therefore deserving to be punished. It is an established principle by law that contempt of court proceedings are quasi criminal in nature because the contemnor is bound to loose his liberty if found guilty of the contempt complained of. In view of this, the standard of proof of contempt is higher than proof on a balance of probabilities. See the holding in the court of appeal case of **Mutikika –vs- Baharaini Farm Ltd [1985] KLR 227** where the court held that the standard of proof in contempt of court proceedings must be higher than proof on a balance of probabilities and almost but not exactly, beyond reasonable doubt. It follows therefore that for the plaintiff herein to succeed in the present application, he has to satisfy this court to a degree beyond proof on a balance of probability that the defendants have disobeyed the order issued by the court on 23rd July 2015.

10. The full content of the order granted by Hon. Justice Okong'o on 17th July 2015 and issued on 23rd July 2015 and which is the subject of these contempt proceedings was as follows:-

1. That I have perused the application dated 15th July 2015 together with the affidavit filed in support hereof, I am satisfied that the application is urgent, I am also satisfied that the purpose of the application may be defeated unless the orders sought are granted ex parte on an interim basis pending the hearing of the application interpartes. Due to the foregoing, the application is certified urgent and an order of inhibition is issued inhibiting the registration of any further or other dealings with LR Transmara/Poroko/39 pending the hearing of the application interpartes the application shall be served upon the defendants herein.

2. Interpartes hearing on 7th December 2015.

11. The foregoing is the order that the respondents are alleged to have disobeyed. The order in my view did not prohibit anything else other than the registration of any further or other dealing with land parcel **Transmara/Poroko/39**. The plaintiff has not demonstrated that the respondents did infact register any transaction against the suit land after the order was issued. Disobedience of the order could only be proved if it was shown that the respondents nonetheless went ahead to effect registration of transaction and/or dealings against the land after they were served with the court order.

12. The complaint by the plaintiff as I perceive it is that the respondents went on to carry out the activities of Transmara Community Development Project after the order was issued. The 1st and 2nd respondents as per the evidence of the chief were officials of the community project and the order did not restrain the officials from carrying out their duties and functions as such officials. There is evidence that the plaintiff was infact apart official of the community project but had ceased to hold any office which raises the issue whether he infact has the locus to bring this suit on behalf of the community project. The issue of the plaintiff's *locus standi* can properly be ventilated during the hearing of the main application and/or the suit. It does appear that the plaintiff infact wants the court to inquire into what in essence are **"management squabbles"** in the community project. I do not think the proper forum to ventilate management issues would be in this forum considering this court as set up is only mandated to deal with disputes relating to land. In the instant application the issue for determination is whether there has been a disobedience of the court order issued on 23rd July 2015 by the respondents and my finding is that the plaintiff has not demonstrated there was any disobedience by the respondents.

13. Having found that the order issued by **Okong'o J.** only prohibited registration of any transactions

and/or dealings in regard to the suit property, it is my finding that there was no proof of any disobedience of this order by the respondents and the plaintiff's application dated 31st July 2015 lacks any merit whatsoever. The application is ordered dismissed with costs to the respondents.

Ruling dated, signed and delivered at Kisii this 6th day of May, 2016.

J. M MUTUNGI

JUDGE

In the presence of:

.....	for the plaintiff
.....	for the 1 st defendant
.....	for the 2 nd defendant
.....	for the 3 rd defendant
.....	for the 4 th defendant
.....	for the 5 th defendant
.....	Court assistant

J. M. MUTUNGI

JUDGE