



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO 3 OF 2015

REPUBLICAPPLICANT

VERSUS

NATIONAL LAND COMMISSION.....RESPONDENT

EX-PARTE

LOMOLO LIMITED 1962SUBJECT

AND

TOMIL MBOYA KOYIMBIH.....1ST CONTEMNOR

ABIGAIL MBAGAYA.....2ND CONTEMNOR

EMMAH MUTHONI NJOGU3RD CONTEMNOR

MOHAMMED SWAZURI.....4TH CONTEMNOR

RULING

(Application for contempt against officers of the National Land Commission; NLC having summoned the applicant to investigate its title; applicant having applied for leave to institute judicial review proceedings for prohibition and certiorari and for stay of intended proceedings; leave together with stay granted; order being served; NLC and its officers proceeding with their session despite the stay order; no response filed to contempt application; application allowed; officers of NLC found to be in contempt; summons issued for their attendance for purposes of punishment)

1. The application before me is one brought under the provisions of Section 5 of the Judicature Act, and Rule 81.4 of the Supreme Court Rules of England.

The applicant has asked for the following orders:-

(1) Spent...

(2) That this court issues summons to the following persons to show cause why they should not be punished by this court for contempt of court :-

(a) *Tomiik Mboya Koyimbih*

(b) *Abigael Mbagaya*

(c) *Emma Muthoni Njogu*

(d) *Mohammed Swazuri.*

3. *That the persons whose names are set out herein above be committed to civil jail for a period of six months for contempt of court.*

4. *That costs of this application be borne by the respondent and the persons whose names are set out at paragraph 2 above.*

2. The general basis upon which the application is founded is that the alleged contemnors disobeyed an order of this court issued on 27 January 2015, which prohibited the respondent, the National Land Commission, and its officers from holding a meeting or passing resolutions over the land parcel L.R No. 10939. This is despite being served with the said order. The application is supported by the affidavit of Githui John who also appears for the ex-parte applicant.

3. To put matters into perspective, through an advertisement placed at page 34 of The Standard Newspaper of 19 January 2015, the National Land Commission (NLC), signaled its intention to make an inquiry into the title of the applicant. The applicant, Lomolo Limited, was aggrieved by this development, more so, on the reason that there has been a determination by a court of law with regard to its title. The applicant therefore filed an application under Order 53 Rule 1 of the Civil Procedure Rules, seeking leave to commence a motion for judicial review for orders of prohibition and certiorari to restrain the National Land Commission, its officials, servants or any other entity acting at its behest, from holding any meeting, investigations, inquiry and making any orders, directions or resolutions affecting the land parcel L.R No. 10939 and to quash the newspaper advertisement.

4. The matter was placed before me on 27 January 2015, and I allowed the application for leave. I permitted the applicant to commence judicial review proceedings for orders of prohibition and certiorari. I further ordered that the grant of leave do operate as a stay and specifically stayed the intended action by the NLC of making inquiries into the title of the applicant until the judicial review action is disposed of.

5. Through this application, the applicant has contended that despite being served with the stay order, the NLC still proceeded to convene a meeting on 12 February 2015 and proceeded with inquiry into the applicant's title. In the supporting affidavit, Mr. Githui has deposed that the order of stay was served upon the NLC on 30 January 2015. I have seen a stamped copy of the order showing that it was duly received. He has further deposed as follows in paragraphs 5 and 6 of the supporting affidavit :-

5. *That further and in spite of the court order, the respondent held a session at the NHIF building in Nairobi where they purported to conduct a review of the grant made in favour of the subject. The entire session was an ill reflection of any intelligent administrative process and the same was largely a shouting match between the commissioners, counsel and the manager of the subject. Both the manager of the subject and I informed the commissioners that the matter was the subject of judicial review proceedings in the High Court and we produced copies of the application and the order. In the first instance the commissioners feigned ignorance but when they realised that they had stamped the order on the face of it, they stated that they have been appointed by the people of Kenya and no High Court can stop them.*

6. *That having taken the proceedings in contempt of court, the respondent, through the offending commissioners demanded that the subject produces copies of the original grant, CR 12 and his citizenship papers. All the documents demanded are either within the reach or in the custody of the respondent.*

6. Neither the NLC nor any of the officers said to be in contempt of court have filed any response to the subject application. Neither did any appear in court, either by themselves or counsel, on 3 March 2015 when the application was canvassed. This is despite being served with the application on 19 February 2015. Mr. Githui for the applicant urged me to allow the application.

7. I have considered the application. This court issued stay orders which were duly served. Despite being served the NLC and the cited persons still proceeded to do that which was explicitly barred by the court. The evidence tendered by the applicant is uncontroverted, as none of the persons sought to be cited for contempt, nor the NLC, have filed any papers in response. It is clear to me that there was outright disobedience of the stay order that I issued on 27 January 2015. I do hold that the cited persons are in contempt of court and that they are liable to suffer punishment.

8. I now issue summons to Tomiik Mboya Koyimbih, Abigael Mbagaya, Emma Muthoni Njogu and Mohammed Swazuri, to appear in court on 16 March 2015 so that this court may give them an opportunity to mitigate before I pass punishment upon them. I direct the applicant to extract the summons and have the same served in good time.

It is so ordered.

Dated, signed and delivered in open court at Nakuru this 5th day of March 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

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In presence of: -

Mr Githui present for the applicant

No appearance for the respondent

Emmanuel Maelo : Court Assistant

MUNYAO SILA

JUDGE

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