



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 460 OF 2017

CHARLES STEVEN MBINDYO.....PLAINTIFF

VERSUS

JUSTUS WAINAINA NJUGUNA.....1ST DEFENDANT

CHIEF LAND REGISTRAR.....2ND DEFENDANT

HON. ATTORNEY GENERAL.....3RD DEFENDANT

RULING

1. In the Notice of Motion dated 15th July, 2020, the Plaintiff has sought for the following orders:

a. This Honourable Court be pleased to issue a Notice to Show Cause against the 1st and 2nd Respondents – Justus Wainaina Njuguna and Chief Land Registrar, Nairobi respectively to show cause why contempt of court proceedings should not be commenced against them and why they should not be punished for contempt of court and/or for blatant disobedience of this Honourable Court's orders made by the Honourable Justice Angote on 20th March, 2018 and 15th May, 2020.

b. This Honourable Court be pleased to find upon hearing of the Notice to Show Cause that the 1st and 2nd Respondents – Justus Wainaina Njuguna and Chief Land Registrar are in contempt of court and/or have blatantly disobeyed this Honourable Court orders made by the Honourable Justice Angote on 20th March, 2018 and 15th May, 2020.

c. This Honourable Court be pleased to punish the 1st and 2nd Respondents – Justus Wainaina Njuguna and Chief Land Registrar, Nairobi for contempt of court and/or for blatant disobedience of this Honourable Court orders made by the Honourable Justice Angote on 20th March, 2018 and 15th May, 2020.

d. This Honourable Court be pleased to direct the Respondents to purge the contempt herein of the orders issued by the Honourable Justice Angote on 20th March, 2018 and 15th May, 2020 by annulling all dealings undertaken by the Respondents herein and any titles issued by the 2nd Respondent over the suit property registered as L.R. No. 9917/4 against the said court orders pending the hearing and determination of this Application.

e. Any other or further orders of the court geared towards protecting the dignity and authority of the court.

f. Costs of this Application be provided for.

2. The Application is supported by the Affidavit of the Plaintiff's wife who has deponed that on 20th March, 2018, the 1st Defendant was restrained by this court from dealing in any manner with the parcel of land L.R. No.9917/4 pending the hearing and determination of the suit; that the said order was duly served upon the Respondents and that the Plaintiff prosecuted the suit to conclusion.

3. The Plaintiff's wife deponed that upon hearing the suit, this court delivered a Judgment in favour of the Plaintiff; that the court declared the Plaintiff the *bona fide* owner of the suit property and that when she sought to have the Judgment of the court executed, she realized that the 1st Defendant had sub-divided the suit property in the year 2017.

4. The Plaintiff's wife finally deponed that in disregard of the injunctive orders, the 2nd Defendant proceeded to issue titles over the same parcel of land to third parties; that the actions of the Defendants smack of disobedience and disregard of the orders of this court and that this

court should cancel and annul all allotments and titles that were issued to third parties in respect to L.R. No. 9917/4.

5. Although the Defendants were served with the Application, they did not file a response. The Application proceeded for hearing as unopposed.

Submissions:

6. The Plaintiff's advocate submitted that the Applicant herein is the registered owner of all that parcel of land being L.R No. 9917/4 measuring 4224.0 Ha (*the suit property*); that he bought the said parcel of land from Land Limited, a subsidiary of the Agricultural Development Corporation, in the year 1989 at a consideration of Kshs. 6,567,500 and that the transfer was executed and lodged at the lands registry after which a title was issued in the Applicant's name.

7. It was submitted that this Court issued an injunctive order on 20th March, 2018 barring the 1st and 2nd Respondents from interfering with the Applicant's property pending the hearing and determination of the suit; that despite the existence of a valid court order which had not been appealed against, the 1st Respondent proceeded to pursue sub-division of the Applicant's property with the authority of the 2nd Respondent and that titles were issued to third parties.

8. The Plaintiff's Advocate submitted that the court delivered Judgment declaring the Applicant the *bona fide* owner of the suit property; that the Judgment notwithstanding, the 1st and 2nd Respondents did nothing to correct their wrongs of sub-dividing and issuing titles over the Applicant's property to third parties and that the Applicant has thus instituted the present contempt proceedings seeking to have this Honorable Court punish the 1st and 2nd Respondents for disobeying valid court orders.

9. Counsel submitted that the Application before court is of a serious nature being that it seeks to have the 1st and 2nd Respondents held in contempt for disobeying valid court orders. Counsel relied on the case of *Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828 as cited in Kimanja Kamau (Suing as the personal representative of the estate of Gideon Gitundu Kimere-deceased vs. Francis Mwangi Mwaura & another [2018] eKLR* where the Court noted:

"Where an application for committal for contempt of Court orders is made the Court will treat the same with a lot of seriousness and urgency and more often will suspend any other proceedings until the matter is dealt with and if the contempt is proven to punish the contemnor or demand that it is purged or both. For instance, an alleged contemnor will not be allowed to prosecute any application to set aside orders or take any other step until the application for contempt is heard. The reasons for this approach are obvious-a contemnor would have no right of audience in any Court of law unless he is punished or purges the contempt."

10. The Plaintiff's advocate submitted that the requisite elements for contempt proceedings were set out in *Kristen Carla Burchell vs. Barry Grant Burchell* as cited in *Katsuri Limited vs. Kapurchand Depar Shah [2016] eKLR* as follows:

"...the applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of wilfulness and bad faith on the part of the Respondent would normally be inferred..."

11. It was submitted by counsel that the terms of the Orders of this Court issued on 21st November, 2017, 20th March, 2018 and the Judgment of 15th May, 2020 were quite elaborate and concise and that the Respondents were required not to interfere with the Applicant's property in any manner whatsoever, including sub-dividing and issuance of titles to third parties.

12. It was submitted that the said Orders were properly served upon the Respondents and that the 1st and 2nd Respondents' act of sub-dividing the suit property and issuing titles to third parties against court orders is a clear case of contempt. Counsel relied on the case of *Mutitika vs. Baharini Farm Limited [1985] KLR 229, 234* as quoted in *Teachers Service Commission vs. Kenya National Union of Teachers & 2 others [2013] eKLR* where it was held as follows:

"A person one who, knowing of an injunction, or an order of stay willfully does something, or causes others to do something, to break the injunction or interfere with the stay is liable to be committed for contempt of court as such person has by his conduct obstructed justice."

13. It was submitted that the actions by the 1st and 2nd Respondents are therefore contemptuous and that this Court should be firm and punish them for wilful disobedience of valid court orders.

14. It was submitted that the 2nd Defendant/Respondent in the pendency of court orders, purported to sub-divide the Plaintiff/Applicant's parcel of land LR No. 9917/4 and issued titles to third parties; that a party should not benefit from an act of illegality and that when this happens, courts of law should step in and curb such benefit.

15. Counsel deponed that this court should cancel all transactions undertaken on the Plaintiff/Applicant's parcel of land LR No. 9917/4 and particularly the titles issued to third parties. According to counsel, the 2nd Defendant's/Respondent's actions of issuing titles to third parties were in blatant violation of court orders hence those titles should be invalidated by this Court.

Analysis and findings:

16. This suit was commenced by way of a Plaint dated 20th November, 2017. Alongside the Plaint, the Plaintiff filed an Application dated 20th November, 2017 in which it sought for injunctive orders. The said Application was allowed by the court on 20th March, 2018 in the following terms:

“1. That a temporary injunction is hereby issued restraining the 1st Defendant, its agents, servants, employees, assignees or whatsoever from offering for sale, selling, disposing off, transferring, sub-dividing, taking possession, occupying or in any other manner interfering with the title of the suit property known as L.R. No. 9917/4 registered as I.R. 47655 pending the hearing and determination of the case.

2. That costs of this Application be provided for.”

17. After the issuance of the said order of injunction, the suit proceeded for hearing, and the court rendered its decision on 15th May, 2020. In its Judgment, the court declared that the Plaintiff is the *bona fide* registered proprietor of land known as L.R. No. 9917/4 and registered as I.R. 47655. Other than the declaratory orders, the court also confirmed the injunctive orders that it had granted on 20th March, 2018.

18. Despite the existence of injunctive orders, the Plaintiff has deponed that the Defendants went ahead to sub-divide the suit property and issued titles over the suit property to third parties. On that ground, the Plaintiff is seeking to have the 1st and 2nd Respondents held to be in contempt of the orders of the court and to punish them.

19. In addition, the Plaintiff is also seeking for an order directing the Respondents to purge the contempt by annulling all dealings undertaken by the Defendants over the suit property.

20. The initial order of injunction in this matter was granted by the court on 27th November, 2017 and was extended on numerous dates. The Affidavit of Service filed on 23rd January, 2018 and sworn by the process-server on 22nd January, 2018 shows that the 1st Defendant was served with the order of the court for the first time on 8th January, 2018.

21. It would appear that after the 1st Defendant was served with the orders and the pleadings on 8th January, 2018, he instructed an advocate who filed a Notice of Appointment of Advocates on 23rd January, 2018. However, the said advocate did not file any pleading in the matter.

22. The Plaintiff has pleaded that the 2nd Defendant, in disregard of injunctive orders, issued titles over the suit property to third parties. To support this disposition, the Plaintiff annexed on the Affidavit a copy of the Lease purportedly issued on 1st August, 2017.

23. I have perused the copy of the Lease purportedly issued in respect of L.R. No. 9917/8 to “Africa Inland Church Kenya Trustees Registered.” The said Lease, although signed on 21st May, 2020, seems not to be registered. Indeed, the Plaintiff did not produce in evidence an official search to show that the Lease was registered at the lands offices.

24. In the absence of evidence to show that the suit property (L.R. No. 9917/4) has been sub-divided and titles or Leases duly registered have been issued, I am unable to find that the Defendants are in contempt of the orders of this court.

25. In fact, on the basis of the documents before this court, I am unable to agree with the Plaintiff’s deposition that the suit property has been sub-divided. Having not exhibited an official search to show that L.R. No. 9917/4 has been sub-divided and titles or Leases issued, I am unable to order for the nullification of the titles that are said to have been issued to third parties.

26. For those reasons, I find the Application dated 15th July, 2020 to be unmeritorious. The Application is therefore dismissed with no order as to costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 25TH DAY OF SEPTEMBER, 2020.

O.A. ANGOTE

JUDGE