



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
ENVIRONMENT & LAND COURT
CIVIL CASE NO. 157 OF 2010

**MAUREEN WACHERA MACHARIAPLAINTIFF
(APPLICANT)**

VERSUS

MARY WAMBUI KIBE.....1ST DEFENDANT (RESPONDENT)

**STAGE COACH MANAGEMENT LTD.....2ND DEFENDANT
(RESPONDENT)**

RULING

1. The notice of motion dated **11th February, 2014** brought under **Order 45(5) & 52** of the supreme court rules; **Section 5** of the Judicature Act, Cap 8 Laws of Kenya and **Sections 1A and 1B** of the Civil Procedure Act, Cap 21 Laws of Kenya, seeks to punish the 1st defendant (respondent) one **Mary Wambui Kibe**, the **District Officer**, Mweiga & the **Land Registrar**, Nyeri for allegedly defying an order of this court.
2. The application is supported by the affidavit of the plaintiff's advocate, **Maureen Wachera Macharia**, sworn on **7th July, 2014**. In that affidavit, the plaintiff's advocate has deposed that on or about **2nd August, 2012** the court confirmed an order barring the 1st defendant from disposing, transferring and or leasing land parcels **Nyeri/Mweiga 2160-2173** (inclusive); that in utter disobedience of the court order the 1st respondent has gone ahead and transferred the suit property to various parties, amongst them Epsilon Company Ltd; that the impugned transfers were effected through Mweiga District Officer, who is by law, is required to give consent to transfer Agricultural Land and that the said transfers were effected during the subsistence of the court order hereto.
3. In support of the application, the deponent has annexed the court order in question marked as 'M1' and copies of searches confirming transfer of some of the suit properties to the persons named herein as M2.
4. In reply, the respondents filed grounds of opposition dated **5th May, 2014** in which it is contended that the application is fatally defective and an abuse of the court process; that the applicant has failed to follow the laid down procedures for contempt proceedings and that no court order was served upon the respondents as by law required. It is further contended that the application has no merit because it seeks orders against individuals who are not parties to the suit.
5. The application was disposed of by way of written submissions.

6. In the submissions filed on behalf of the applicant, it is contended that the 1st respondent is a serial contemnor of court orders. Referring to **Sections 1A and 1B** of the Civil Procedure Act which obliges parties to a suit and/or their Advocates to assist the court to further the overriding objective of the Civil Procedure Act and the rules made there under and to that end to participate in the processes of the court and to comply with orders of the court, Counsel for the applicant maintains that despite being aware of the court order herein, the 1st respondent disregarded the court orders and disposed of some of the suit properties. For that reason it is submitted that the respondents do not deserve any mercy or indulgence by this court.

7. On behalf of the 1st respondent, it is explained that the application herein is in the nature of contempt proceedings against the respondents (some of whom are not parties to the suit). The application is also challenged on the ground that the court order allegedly served on the respondents had no penal notice and that the applicant has not filed a certificate of service to confirm personal service of the order as by law required. Further, that the applicant has failed to annex the allegedly confirmed order of the court to his affidavit.

8. Concerning the import of a penal notice in a court order, it is submitted that the notice is required to notify the person being served of the penal consequences of disobedience. Failure to endorse the order with the penal notice is said to have rendered the application fatally defective. In that regard reference is made to, among other cases, **Mwangi Wang'onde v. Nairobi City Commission** Civil Appeal No. 95 of 1988, where the court of Appeal held:-

“No order of the court requiring a person to do or abstain from doing any act may be enforced unless a copy of the order has been served on the person required to do or abstain from doing the act in question. The copy of the order must be endorsed with a notice informing the person whom the copy is served that if he disobeys the order he is liable to the process of execution to compel him to obey it.”

9. In view of the aforementioned gaps/defects in the application, it is reiterated that the application is defective **Ab initio**. The court is urged to dismiss it with costs to the respondents.

10. It is not in dispute that the court order which is the subject matter of the application herein, was not endorsed with a penal notice as decreed by the court of appeal in the case of Mwangi Wang'onde (*supra*).

11. There is also no evidence that the order was either served on the respondents or brought to the attention of the respondents as by law required. In this regard see the case of **Basil Criticos v. Attorney General & 8 others** (2012) e Klr where **Lenaola J.** stated:-

“The law has changed and as it stands today knowledge supersedes personal service...where a party clearly acts and shows that he had knowledge of a court order, the strict requirement that personal service must be proved is rendered unnecessary.”

12. Although in the instant case it is alleged that the respondents were aware of the court order, no evidence has been adduced capable of proving that fact. In view of the foregoing, I find and hold the application to be bad in law and dismiss it with costs to the respondents.

Dated, signed and delivered in open court at Nyeri this 13th day of February, 2014.

L N WAITHAKA

JUDGE