

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION

ELC. NO. 586 OF 2013

MOONGLOW ASSETS LIMITED.....PLAINTIFF

VERSUS

THE COMMISSIONER OF LANDS.....1ST DEFENDANT

THE REGISTRAR OF TITLES.....2ND DEFENDANT

THE DIRECTOR OF SURVEYS.....3RD DEFENDANT

HEKIMA LAND SURVEYS LIMITED4TH DEFENDANT

SHAMJI KALYAN PINDORIA LIMITED5TH DEFENDANT

RULING

Before me for determination is the ex-parte Notice of Motion dated 5th February 2014 filed by the 5th Defendant/Applicant seeking, inter alia, leave to institute contempt of court proceedings against the individuals named therein.

After a careful perusal of the application, I have formed two impressions. The first is that the Applicant has not shown that there is a specific order of this court issued by a particular judge on a particular date which the contemnors supposedly contravened. The matter complained of is a decision taken by a government institution namely the National Land Commission. To my mind, therefore, the wrong that the Applicant seeks to correct is within the province of a judicial review application rather than a substantive contempt application. I am aware through the submissions of the 5th Defendant's counsel that in fact, the 5th Defendant has commenced judicial review proceedings against the same individuals and has even obtained a stay of the actions he complains about herein. I consider it unnecessary to proceed with both proceedings running in parallel.

My other impression of this application is that it is premised on issues which arise in this suit which this court will consider at the main trial. Those issues cannot be determined through an interlocutory application such as this one.

In addition, as I have stated in an earlier ruling delivered in this matter, parties to this suit should focus all their effort towards obtaining a full and final resolution of this dispute through the main trial. I hold the view that interlocutory applications are in fact standing in the way of achieving this and should be avoided.

With this background, therefore, I decline to grant leave as requested and also decline to grant the other consequential prayers in this application. Accordingly, I hereby dismiss this application. Costs shall be in the cause.

SIGNED AND DELIVERED AT NAIROBI THIS 14th DAY OF March 2014

MARY M. GITUMBI

JUDGE