



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION
ELC. CASE NO. 838 OF 2013

TORET OLE KEEJA SANYEKA1ST PLAINTIFF/APPLICANT

DANIEL KANCHORI.....2ND PLAINTIFF/APPLICANT

VERSUS

LEYIANO KEJA KIKOYOO.....1ST DEFENDANT/RESPONDENT

THE COMMISSIONER OF LANDS.....2ND DEFENDANT/RESPONDENT

RULING

Coming up before me for determination is the Notice of Motion dated 30th October 2013 filed by the Plaintiff/Applicant seeking for orders as follows:

1. That Leyiano Keeja Kikoyoo be committed to civil jail for deliberately disobeying orders of the court issued on 1st August 2013 by Hon. Lady Justice Gitumbi.
2. That the transfer of the suit property to Trizer Gladys Mbeyi, Sepekua Ole Sinkeet and Josephine Makandi be revoked for contravening the court order.
3. That costs of and occasioned by this Motion and for obtaining leave thereto be paid by the Respondent.

The Application is based on the grounds appearing on the face of it together with the Supporting Affidavit of Daniel Kanchori sworn on 30th October 2013 in which he averred that the court orders referred to in this suit were given by Hon. Lady Justice Gitumbi on 1st August 2013. He further averred that he has recently been seeing strangers in the suit property together with the 1st Defendant and that he instructed his advocate to conduct a search over the suit property. He stated further that the search over the suit property revealed that the same has been transferred to third parties on 20th September 2013 as the matter waited to come for mention in court on 7th October 2013. He further stated that the status quo orders were further extended on 16th October 2013. He further stated that he is aggrieved by the action of the 1st Defendant to remove the caution over the suit property registered by him and transfer of the suit property to other third parties. He also stated that they were apprehensive that the 1st Defendant will not stop the illegal subdivision of the suit property and transferring the same to third parties to the detriment of the

beneficiaries thereof.

The Application is contested. The 1st Defendant filed his Replying Affidavit sworn on 15th November 2013 in which he averred that he has not breached the said court order as the same was never served upon him, that no notice of penal consequence was indicated and further that the subdivision of the three parcels mentioned in the application commenced before the suit was filed and was on going. He further stated that the Applicant's Notice of Motion dated 12th July 2013 sought an injunction against the property known as L.R. No. 10029 Plot No. 19 and that no order was granted in respect of L.R. NO. 14801 or registered against that title. He further stated that in the circumstances, he did not commit any contempt of court warranting him to be committed to civil jail as requested by the Plaintiff/Applicants.

Black's Law Dictionary (Ninth Edition) defines contempt of court as:-

“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”

This is supported further in the case of **TEACHERS SERVICE COMMISSION v KENYA NATIONAL UNION OF TEACHERS & 2 others [2013] eKLR** where Ndolo J observed that,

“The reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law.”

I have studied the pleadings carefully and noted that when the Plaintiffs filed suit, in the Plaint and accompanying Notice of Motion dated 12th July 2013, the Plaintiff referred to L.R. No. 10029 Plot No. 19 as being the subject matter of this suit. They stated further that this parcel of land measures 63 Hectares or 155 acres in approximate size. It is in the context of this description of the suit property that I issued the court order which has been stated in this Application as having been contravened. However, in the present Application, the Plaintiffs refer the suit property as being L.R. No. 14801 which is a parcel of land measuring 79 Hectares or 194 acres. Clearly, it would seem to me that the two parcels cannot be the same. This is a matter for the trial court to unravel. At this stage, I find that the Court Order issued by this court on 1st August 2013 referred to L.R. No. 10029 Plot No. 19 as stated in the Plaint. The consequence of this finding is that any actions undertaken by the 1st Defendant in respect of any other parcel of land, including L.R. No. 14801 does not amount to contempt of court.

Accordingly, this Application is hereby dismissed with no order as to costs.

SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF MAY 2014

MARY M. GITUMBI

JUDGE

