



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

ELCC No. 321 OF 2015

CHEROTICH KIPRONO RUTO.....PLAINTIFF

VERSUS

REUBEN KIPNGETICH.....1ST DEFENDANT

CHARLES KIPNGETICH.....2ND DEFENDANT

JENNIFER KIPNGETICH.....3RD DEFENDANT

KEN KIPNGETICH.....4TH DEFENDANT

WESLEY KIPNGETICH.....5TH DEFENDANT

RULING

1. By Notice of Motion dated 20th April 2020, the plaintiff seeks the following orders:

1. *(Spent)*

2. *THAT this Honourable Court be pleased to issue an order of committal to prison of 1. Reuben Kipngetich, 2. Charles Kipngetich, 3. Jennifer Kipngetich, 4. Ken Kipngetich and 5. Wesley Kipngetich Defendants/Respondents for six months and/or be fine (sic) as this Court may determine for their disobedience of the orders of this Court granted on 8th November, 2016.*

3. *THAT the Respondents be and are hereby restrained from filing any pleadings documents and or taking any further/other proceedings in this matter until it purges its contempt and/or pull down the structure on the suit land at their cost.*

4. *THAT all necessary and consequential orders or directions be given in order to meet the ends of justice and uphold the authority, dignity and honour of this Honourable Court.*

5. *THAT there be a permanent injunction prohibiting the Respondents 1. Reuben Kipngetich, 2. Charles Kipngetich, 3. Jennifer Kipngetich, 4. Ken Kipngetich, and 5. Wesley Kipngetich from disposing, selling, transferring, partitioning (sic), leasing, and/or erecting any kind of fixtures or chattels on the suit land registered as L.R Molo South/Keringet Block 2/114.*

6. *An order that the costs of this application be borne by 1. Reuben Kipngetich, 2. Charles Kipngetich, 3. Jennifer Kipngetich, 4. Ken Kipngetich, and 5. Wesley Kipngetich Defendants/Respondents herein.*

7. *THAT in light of COVID-19 Emergencies measure (sic) National Council of the Administration of Justice (NCAJ) the court be pleased to issue prayer 5 and direct that the Applicant to fix this matter for directions once the normal court operations resumes.*

2. The application is supported by an affidavit sworn by the plaintiff. She deposed that the respondents have felled trees and erected permanent structures on the suit property in violation of the orders made on 8th November 2016. She annexed a copy of the order and some photographs. That the respondents did so despite being cautioned in court on 2nd March 2020. She added that the order was served upon the respondents and that the respondents were represented in court when the order was made.

3. The respondents opposed the application through a replying affidavit sworn by the first defendant. He deposed that the respondents were

not aware of any court order prior to being served with the present application and that he is not aware of any order of inhibition registered against the title.

4. The application was canvassed through written submissions which both sides duly filed. I have considered the application, the affidavits and the submissions.

5. It cannot be over-emphasized that every person against whom an order is made by court of competent jurisdiction has a duty to obey it unless and until it is discharged. Court orders are serious pronouncements. They are not issued in vain. The Court of Appeal rendered itself in **Fred Matiang'i the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government v Miguna Miguna & 4 others [2018] eKLR** as follows:

When courts issue orders, they do so not as suggestions or pleas to the persons at whom they are directed. Court orders issue ex cathedra, are compulsive, peremptory and expressly binding. It is not for any party; be he high or low, weak or mighty and quite regardless of his status or standing in society, to decide whether or not to obey; to choose which to obey and which to ignore or to negotiate the manner of his compliance. ...

6. Therefore, an allegation of contempt of court is a serious matter since the very foundation of the rule of law is threatened by disregard of court orders. If an allegation of contempt of court is proven, the liberty and property of the contemnor are at risk. It is for that reason that the standard of proof in contempt proceedings is higher than the usual one in civil proceedings of proof on a balance of probabilities. See **Mutitika vs. Baharini Farm Limited [1985] KLR 229**.

7. This court like any other court has inherent jurisdiction to ensure that judicial authority, dignity and the rule of law are upheld at all times. The Court of Appeal stated in **Woburn Estate Limited v Margaret Bashforth [2016] eKLR** as follows:

The jurisdiction of the High Court (or any other court for that matter) to punish for the violation of its orders cannot be in question. Apart from section 5 (1) of the Judicature Act that vests in the High Court the power, like those of the High Court of Justice in England, to punish any party who violates its orders, the court, by virtue only of being a court has inherent powers to make sure its process is not abused and its authority and dignity is upheld at all times. ...

8. More recently, the Court of Appeal stated as follows in **Kiru Tea Factory Company Ltd v Stephen Maina Githiga & 14 others [2019] eKLR**:

25. The cases of Mutitika v Baharini Farm (1982-88) I KAR 863, Hadkinson v Hadkinson (1952) All ER 567, Johnson v Grant (1923) SC 7890 and Christine Wangari Gachege v Elizabeth Wanjiru Evans, and 11 others, Civil Application No. 33 of 2013, are all to the effect that a person who knowing of the existence of an order of injunction or stay but willfully does an act that violates the terms of the injunction or stay is liable to be committed for contempt; that a party directed by an order of court to do or to refrain from doing any act must comply with the direction until it is discharged, irrespective of that party's view or opinion over the order; that contempt of court proceedings are intended not to protect personal dignity of the individual judge or the private rights of any litigant, but are meant to protect the fundamental supremacy of the law and the rule of law; and that leave to commence contempt of court proceedings is no longer required in view of the 1999 Civil Procedure Rules of England and the Civil Procedure (Amendment No.2) Rules, 2012 (of England).

9. To sustain an application for contempt the applicant must demonstrate wilful disobedience and the order said to be disobeyed must be clear enough as to leave no doubt as to what is to be done or refrained from. The Court of Appeal stated as follows in **Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 others [2018] eKLR**:

... It is trite that to commit a person for contempt of court, the court must be satisfied that he has willfully and deliberately disobeyed a court order that he was aware of. That is made absolutely clear by section 4 of the Contempt of Court Act and the ruling of the Supreme Court in Republic v. Ahmad Abolfathi Mohammed & Another ... Secondly, as this Court emphasized in Jihan Freighters Ltd v. Hardware & General Stores Ltd and in A.B. & Another v. R. B. [2016] eKLR, to sustain committal for contempt of court, the order of the court that is alleged to have been deliberately disobeyed must be clear and precise so as to leave no doubt as to what a party was supposed to do or to refrain from doing. Lastly, the standard of proof in committal proceedings is higher than proof on a balance of probabilities, though not as high as proof beyond reasonable doubt. ...

10. The record herein shows that on 8th November 2016, my brother Munyao J. rendered himself as follows:

I have looked at ELC 63/2016. It is related to this one and there is a cross application for injunction. My view is that it is best that status quo on the disputed land be maintained pending hearing of this suit and ELC 63/2016. I also issue an order of inhibition on the title under dispute. No party should undertake any dealings.

11. The applicant contends that the respondents disobeyed the order by felling trees and erecting permanent structures on the suit property. In the order, the judge stated that "My view is that it is best that status quo on the disputed land be maintained..." It is not clear to me whether an order of status quo was thereby issued or the judge was making a recommendation to the parties. There is thus doubt as to what the parties were supposed to do or to refrain from doing as regards the status quo. While I can see that an order of inhibition was issued, the applicant has not availed any evidence from the land registry to show that the inhibition was registered. **Section 68 (3) of the Land Registration Act** makes it abundantly clear that an inhibition does not bind or affect the land until it has been registered. Bearing in mind the standard of proof in committal proceedings which is higher than proof on a balance of probabilities, I am not confident that the applicant has established wilful disobedience on the part of the respondents.

12. Regarding the prayer for permanent injunction, the law is that such an injunction should not be granted unless there exist special

circumstances or only in the clearest of cases. Permanent injunctions run the risk of concluding a case or a part of a case prematurely. See **Lucy Wangui Gachara v Minudi Okemba Lore [2015] eKLR**. I note that the plaintiff has a prayer for permanent injunction in the plaint. I see no special circumstances herein that would warrant depriving the parties the opportunity to have the dispute heard and determined on the basis of oral evidence before judgment is rendered. I am not persuaded that a permanent injunction should issue.

13. In the result, Notice of Motion dated 20th April 2020 is dismissed with costs to the respondents. Bearing in mind the age of the matter, parties to urgently set down the suit for hearing.

Dated, signed and delivered at Nakuru this 29th day of October 2020.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Rutto for the plaintiff/applicant

No appearance for the defendants/respondents

Court Assistants: Beatrice Jelimo & Julius Lotkomo