



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
ELC CASE NO. 499 OF 2013

ELIZABETH NJERI MUNENE PLAINTIFF/APPLICANT

(Suing as the legal representative of the Estate of Muchiri Munene)

VERSUS

KARIUKI MUCHIRI 1ST DEFENDANT

LYDIAH WAMBUI 2ND DEFENDANT

AGNES WAKUTHII 3RD DEFENDANT

RULING

By her Notice of Motion dated 17th July, 2013, the applicant herein relying on **Section 5 of the Judicature Act** has filed this application seeking leave to institute Contempt of Court proceedings against the 3rd defendant/respondent and the Senior Scheme Manager Mwea Irrigation Settlement scheme on the basis that the two have defied a temporary injunction issued by this Court on 10th May 2010 restraining the defendants from interfering with rice holding No. 2290. The application is supported by the applicant's affidavit also dated 17th July, 2013.

The application is opposed by both the 3rd defendant/respondent and the Senior Manager Mwea Irrigation Settlement Scheme.

The parties have filed written submissions to the same which I have considered together with the respective affidavits.

The 3rd defendant/respondent's replying affidavit appears to be addressing the substance of the suit.

On the other hand, the Senior Scheme Manager Mwea Irrigation Scheme has filed grounds of objection stating that he is not in fact a party to this suit.

From the supporting affidavit of the plaintiff/applicant, there is nothing to suggest that the Senior Scheme Manager of Mwea Irrigation Scheme was ever served with the order in question (see paragraph 3 of her supporting affidavit). The said order not having been served upon the said manager, it is difficult to see how he can be cited.

Having said that, however, what is before me now is an application for leave to cite the 3rd defendant/respondent and the said Senior Manager for contempt. Both parties have proceeded on the

assumption that they require this Court's leave.

The position in law is that since the order said to have been flouted is a Court order, the rules have now changed in England since October, 2012 and in an application to commit for contempt of a Court order, no leave is required. That is the prevailing law in England and Section **5 of the Judicature Act** under which this application is founded provides that the power to punish for contempt shall be the power that

“----- is for the time being possessed by the High Court of Justice in England-----”

The application now before me was filed in July 2013 when the law in England had changed to remove the requirement of leave in a case where the order subject of the contempt proceedings sought to be instituted is a Court order. Recently, the Court of Appeal in the case of **CHRISTINE WANGARI GACHEGE VS ELIZABETH WANJIRU EVANS AND OTHERS C.A. CIVIL APPLICATION NO. 233 of 2007 (NBI)** revisited the various legislations in Kenya and England and also case law and had this to say:-

“It is clear from this summary that leave, now called “permission” is not required where committal proceedings relate to a breach of a judgment, order or undertaking”.

The Court then went on to strike out an application for leave relating to breach of its order.

The same scenario obtains here. The contempt proceedings that the applicant seeks to bring relate to an order issued by this Court. No leave is required to bring such proceedings. Unfortunately, both parties addressed me under the impression that leave is required and therefore while striking out this application, I will make no order as to costs. The applicant is at liberty to file the contempt proceedings.

Ultimately therefore, the plaintiff/applicant's Notice of Motion dated 17th July, 2013 is struck out with no order as to costs.

B.N. OLAO

JUDGE

10TH OCTOBER, 2014

10/10/2014

Before

B.N. Olao – Judge

Mwangi – CC

Mr. Chomba for Kiama for Applicant – present

Mr. Ombachi for Interested party – absent

COURT: Ruling delivered this 10th day of October, 2014 in open Court.

B.N. OLAO

JUDGE

10TH OCTOBER, 2014