REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC MISCELLANEOUS CIVIL APPLICATION NO. 32 OF 2014

FRANCIS NDUNGU GITAU ……...……..1ST APPLICANT

JOHN NDUNGU GITAU ……..…… 2ND APPLICANT

VERSUS

THE DISTRICT LAND REGISTRAR,

THIKA DISTRICT LAND REGISTRY …….. RESPONDENT

IN THE MATTER OF AN APPLICATION FOR LEAVE TO CITE THE DISTRICT LAND REGISTRAR, THIKA DISTRICT LAND REGISTRY FOR CONTEMPT

RULING

This application is brought under ***Section 5 (1) of the Judicature Act, Order 52 Rule 2 (1) 2 (2)*** of the Rules of the ***Supreme Court of England*** and ***Section 3A of the Civil Procedure Act.*** It seeks leave of this Court to commence contempt of Court proceedings against the District Registrar Thika Land Registry for the disobedience of an order issued by this Court on 23rd May, 2013 directing the said Land Registrar to issue the applicants with certified copies of the transfer documents registered at the Land Registry for transfer of parcel number NDARUGU/GACHARAGE/794 from Gitau Kamau to Gakuu Kiuthu and all documents evidencing combination of NDARUGU/GACHARARE/794 and NDARUGU/GACHARAGE/205 giving rise to NDARUGU/GACHARAGE/796 plus any other document relating to the transfer and/or combination of the aforesaid suit land.

The application is supported by the applicant's affidavit dated 10th April, 2014.

I have considered the application. It is similar to the one I handled in KERUGOYA ELC NO. 20 of 2012 wherein I advised counsels that in cases where the contempt proceedings touch on a Court order, leave is not necessary. I cited the Court of Appeal's decision in the case of ***CHRISTINE WANGARI GACHEGE VS ELIZABETH WANJIRU EVANS C.A CIVIL APPLICATION NO. 233 of 2007 (NBI)*** where that Court stated as follows:-

> "***We find on the basis of the new Civil Procedure Rules (of England) which are contained in the second supplement to the 2012 White Book that no leave is required before bringing an application like the one before us, for committal for contempt relating to breach of this Court's order".***

The same Court after considering the law on the issue of contempt made the following statement:-

"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"

In the case now before me, the breach complained of is in relation to an order of this Court and it is now clear that no leave is required before contempt proceedings are instituted.

This application is therefore struck out with no order as to costs. The substantive motion for contempt may be filed.

It is so ordered.

B.N. OLAO

JUDGE

14TH OCTOBER, 2014

14/10/2014

Before

B.N. Olao – Judge

Mwangi – CC

Applicant – absent

Respondent – absent

COURT: Ruling was due on 3rd October, 2014 but there was no appearance by the Applicant though present in Court when the date was fixed. Notices were issued that same will be delivered today. There is still no appearance.

Ruling is accordingly delivered today in the absence of the parties as I cannot keep the same pending indefinitely.

B.N. OLAO

JUDGE

14TH OCTOBER, 2014