



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
CONSTITUTION PETITION NO. 4 OF 2018
IN THE MATTER OF ARTICLES

1,2,3,10,19,20,22,23,35,40,43,47(1),50,60,63,165(3)(B),258 AND 259 1 (B) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE SUPREMACY OF THE CONSTITUTION PURSUANT TO ARTICLE 1 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL) HIGH COURT PRACTICE AND PROCEDURE RULES, 2006, RULES 11-23

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOM UNDER ARTICLES 20,27,28,40,43,53,56 AND 57 OF THE CONSTITUTION OF KENYA

AND IN THE MATTER OF THE COMMUNITY LAND ACT SECTIONS 4,5,6,7,8,9,10,11,12 AND 13

AND

IN THE MATTER OF THE ADJUDICATION AT NAROSUURA GROUP LR NO. NAROK/NAROSUURA/1, IN NAROK COUNTY

BETWEEN

SARUNI OLE LOONKUSHU & 9 OTHERS.....PETITIONERS

-VERSUS-

THE ATTORNEY GENERAL & 14 OTHERS.....RESPONDENTS

RULING

By a Notice of Motion dated 25th March, 2019 the petitioners/Applicants had sought for the following orders: -

(1) (a) The Court be pleased to cite the fifth to fifteenth respondents for contempt, for disobeying court orders, failing which they be committed to civil jail for contempt of court.

(b) Sirere Daniel Nakola and Daniel Sekut, respectively for contempt, for disobeying court orders, failing which they be committed to civil jail for contempt of court.

(2) Pending the hearing and determination of this application and subsequently of the petition, the respondents and their servants or agents be restrained from demarcating, disposing or dealing in any other way with the subject parcels of land Narosura/Cis Mara and Narosura/Cis Mara/6 in Narok County.

(3) Pending the hearing and determination of this petition, the respondents, their servants and/or agents or otherwise howsoever be restrained from dealing in any way with the subject parcels of land herein.

(4) The fifth to fifteenth respondents and their said witnesses be denied audience before his court unless, or until, they should purge contempt of court.

(5) That costs of this application be provided for.

The Application was based on the grounds that there was in force an order of maintenance of status quo issued by this court on the 3rd May, 2018 which were breached by the 5th to 15th respondents in the terms as contained in paragraph 21 of Daniel Sekut witness statement and paragraph 36 of the statement of Sirere Daniel Nakola which statement as alleged by the petitioners as stated hereunder:-

(i) There is outright admission of breach of court orders issued by the court on the 3rd May, 2018.

(ii) The claim that there is a direct threat whereby if the injunctive orders will continue being operation, then there will be no peace.

(iii) An affirmation that the only remedy to the conflict would only be lifting the injunctive orders.

(iv) An affirmation that the continuation of sub division and issuance of titles would be the only solution to the conflict.

(v) The emphasis through underlining of statement of Sirere Daniel Nakola especially on the point that the lasting solution would be "members having their specific parcels with individual ownership documents" manifestly means that the solution remains in their illegal subdivision and issuance of the title rather than what the court will give as a solution.

(vi) The court is undermined in the resolution process.

(vii) There is the threat that if it declares the purported process as illegal, then there will be conflict.

(viii) The makers of the statements being people who hold respectable leadership positions in the community, should be at the forefront in advising members of the public to respect court orders issued by court, instead, they are not remorseful with regard to the blatant disrespect of court orders.

It is the petitioners' contention that the aforesaid statements were in flagrant disregard of the orders of the court by the 5th to 15th respondents and the same demeans the sanctity of this court which mocks, and disrespects the court.

The application was further supported by the affidavit of Saruni Ole Loonkushu in which he deponed that having seen the said statements the same seem to disregard the order that was issued by the court on 3/5/2018 and thus the 5th to 15th respondent be held in contempt of the aforesaid orders and hence punished for contempt of court.

The Application was opposed by the respondents through their replying affidavit that was filed on 17th June, 2019 in which they averred that the application is misguided and devoid of any merit as allegations therein were taken out of context and thus aimed to delay the expeditious determination of the substantive matter between the parties. The respondents have further denied that the alleged statements as acts of contempt on the part of 5th to 15th as there is no direct acts that are attributable to the respondents which are contemptuous of the orders of the court. It is the respondents' contention that the statements complained about are mere expressions stating that the instant dispute between the parties can only be resolved if the suit property is sub divided and titles issued to all the members of the group ranch, the respondents further averred that witness statements cannot amount to threats to the court as alleged by the applicants. Moreover, when the allegations and the manner of disobedience by each and every witness or respondents has not been sated.

I have considered the application before me and the replying affidavit in opposition to the same. Even though the party has filed submissions on the application the issue for determination before me is whether the contents of the statements by the respondent can amount to contempt of the court that were issues on the 3/5/2018.

It is the applicants' contention that averments contained by the witness statement filed amounts to either a breach or disobedience of the orders. The respondents contend that the interpretation given by the applicants with respect to the said statement was wrong and have been taken out of content.

For a party to be found to be guilty of contempt of court there must be the existence of an order that was issued by a court of competent jurisdiction which order was willfully disobeyed and/is disregarded by the party to have to be in contempt. In the instant application it is alleged that the witness statement filed are in contempt of the court. A plain reading of the statement in my opinion are mere expressions of the said witness about the manner in which the dispute can be resolved even if we were to stretch those intentions their mere expressions of interest cannot institute contempt. A party must demonstrate that there was actual and willful disobedience of the orders of the court which I find the applicants have not been able to discharge and for the reasons above granted I find that the Notice of Motion dated 25/3/2019 lacks merit and I thus disallow the same and I further direct that each party shall bear its own costs on the other orders I do order that there be status quo and I will not make any determination on the same.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **15th day of October, 2020**

Mohammed N. Kullow

Judge

15/10/2020

In the presence of: -

CA:Chuma

Mr. Ochang for the respondent

Ms Wambura holding brief for Kagicua for the applicants