



REPUBLIC OF KENYA

High Court at Eldoret

Succession Cause 109 of 2000

IN THE MATTER OF THE ESTATE OF ELIZABETH CHESORIO (DECEASED)

BETWEEN

JOSHUA RONO APPLICANT

AND

DAVID RONO 1ST RESPONDENT

WILSON RONO 2ND RESPONDENT

DANIEL RONO 3RD RESPONDENT

RULING

The application is by way of Notice of Motion dated 1st October, 2012 in which the Applicant seeks leave to commence contempt proceedings against the District Land Registrar, Kericho.

Although the Notice of Motion bears two other main prayers, namely, prayers 3 and 4, the latter two were abandoned by counsel for the Applicant in that leave granted earlier to file the contempt proceedings was not based on a formal application. This court together with counsel for the Respondents were in agreement in this regard. Consequently Replying Affidavits filed in opposition to this application were withdrawn by counsel for the Respondents so as to allow counsel for the Applicant to ventilate the prayer for leave formally.

The application is supported by the affidavit of the Applicant sworn on 1st October, 2012.

The order which the Respondents are alleged to have disobeyed was issued on 23rd September, 2010 which was in the terms that:-

“Temporary preservative orders are issued in respect of L.R. No. KERICHO LITEIN/63 which is one of the subject matters of the succession cause pending the hearing and determination of the cause.”

The Respondents to this application are named as, David Rono, Wilson Rono and Daniel Rono. According to Mr. Chepkwony for the Applicant, the Respondents, in utter disregard of this preservative order proceeded to cause the registration of the subject land at District Lands Office in Kericho. That the District land Registrar, Kericho caused the registration of the preservative order after

the land had been subdivided into four (4) other titles, namely **KERICHO/LITEN/719, 1720, 1721 and 1722**.

Upon issuance of this order, unfortunately, the same was not served upon the Respondents. Mr. Chepkwony conceded as much, but added that the order was served upon the District Land Registrar who caused its registration on the land registrar after the latter sub-division.

It is cardinal law and procedure that in contempt proceedings, the purported contemnor must be served with the order he/she is said to have disobeyed. This requirement is mandatory and cannot be circumvented by any means.

Suffice it to say therefore, the Respondents to this application were never served with the order. Even if the District Land Registrar, Kericho was served, he is not a party to this application. Consequently no contempt proceedings this far can be filed against him.

To buttress this argument I have perused the court record and no Affidavit of Service exists attesting service of the order upon the Respondents. The only Affidavit of Service on record after the order was issued is one filed on 15th October, 2012 sworn by Geoffrey Sang, a Process Server, on 11th September, 2012. He depones as to the service of the Notice of Motion application (which is the application subject of this ruling) under a certificate of urgency, Supporting Affidavit together with annexures upon the Land Registrar, Kericho.

At no time was the order served separately and personally upon the Respondents. May I point out to the Applicant that service of the order cannot be deemed as proper service if it is done as an annexure to the application in which leave is sought. Moreso, even if the District Land Registrar were served, he is not named as a Respondent in this application, and so leave cannot be granted to file contempt proceedings against him.

For this reason unfortunately the application must fail. The same is dismissed with costs in the cause.

DATED and DELIVERED at ELDORET this 7th day of May, 2013.

G. W. NGENYE – MACHARIA

JUDGE

Mr. Obudho holding brief for Chepkwony Advocate for the Applicant