



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 393 OF 2014

JOHN MWAURA KINYANJUI.....1ST PLAINTIFF

JOSEPH GACHERU KARIUKI.....2ND PLAINTIFF

LUCY NJERI NJUGUNA.....3RD PLAINTIFF

(As Trustees of Ambuia A Mbari Ya Ngoru clan Self Help Group)

VERSUS

JERIEMIA GITANGU.....1ST DEFENANT

FRANCIS KIBATHI NJENGA.....2ND DEFENDANT

HURUMA NGEI (II) SELF HELP GROUP.....3RD DEFENANT

RULING

1. Coming up for determination are two applications. The notice of motion dated 27th May 2019 is brought under section 3 and 3A of the Civil Procedure Rules Act and all enabling provisions of lat.

2. It seeks orders:-

(1) Spent.

(2) That the honourable court do issue warrant of arrest against the 1st, 2nd and 3rd defendants for being in contempt of court orders and are in breach of the court ruling dated 22nd May 2009.

(3) The cost be in due cause.

3. The grounds are on the face of the application and are set out in paragraphs 1 to 9.

4. The application is supported by the affidavit sworn jointly by John Mwaura Kinyanjui, Joseph Gacheru Kariuki and Lucy Njeri Njuguna plaintiffs/applicants herein sworn on the 22nd May 2019.

5. The notice of motion dated 29th October 2019 is brought under orders 1 rule 14(1) of the Civil Procedure Rules, Section 3 and 3A of the Civil Procedure Act.

6. It seeks orders :-

(1) Spent.

(2) That the honourable court be pleased to issue a warrant of arrest against the defendants for breach of courts order dated 15th June, 2019 and ruling dated 22nd May 2009 as prayed in the plaintiffs' application dated 28th May 2019.

(3) That the police at Kamulu Police Station to enforce the orders and maintain peace.

(4) The cost be in due cause.

7. The grounds are on the face of the application and are set out in paragraphs 1 to 8.

8. The application is supported by the affidavit sworn jointly by John Mwaura Kinyanjui, Joseph Gacheru Kariuki and Lucy Njeri Njuguna the plaintiffs/applicants herein on the 29th October 2019.

9. It should be noted that the two applications seek similar orders.

10. On the 4th February 2020, Mr. Kigen held brief for Ms Kinuthia who was then appearing for the defendants/respondents. On that date, the two applications were fixed for hearing on 11th May 2020. The defendants/respondents were given fourteen (14) days to file responses.

11. On the 11th May 2020, Ms. Kinuthia for the defendants/respondents did not attend court. The defendants/respondents had not filed any responses to the two applications. Mr. Wakiaga for the plaintiffs/applicants sought a ruling date. The matter was then set for ruling on 5th November 2020.

12. As things stand, the applications are not opposed. In paragraph 4 of the joint supporting affidavit, it is stated:-

“That the Defendants/Respondents have ignored the court orders and have continued building illegal structures on the plaintiffs’ land and selling the land against court’s ruling and orders”.

13. By a ruling dated 22nd May 2009, the honourable Lady Justice Lesiit granted the following orders:-

(1) “That an injunction be and is hereby issued restraining the defendants both jointly and severally and by their agents, servants, employees, workmen, or anyone claiming through them from interfering, entering, constructing or disposing by way of sale or otherwise land parcel title reference LR NO Nairobi/Block 126/217 until the full and final determination of this suit and or until further orders of this honourable court.

(2) That the costs of this application be on cause”.

It is against this background that the plaintiffs’/applicants’ have brought these applications.

14. The plaintiffs’/applicants’ applications have annexed photographs of buildings at various stages of construction. Some are complete. This confirms that there is activity on the suit property contrary to the orders of 22nd May 2009. The said orders were granted after both sides were heard. The defendants/respondents are therefore aware of these orders. The suit has not been heard and determined. The construction on the suit property is therefore in blatant breach of the orders of 22nd May 2009.

15. In the case of **Hadkinson vs Hadkinson [1952] ALL ER 567 at 569** it was held that:-

“.....court orders whether irregular or not have to be obeyed unless they are varied or set aside”.

The orders issued on 22nd May 2009 have not been varied and or set aside. The defendants/respondents have not explained what difficulty they are having in complying with the said orders. In the absence of any reasonable explanation, I find that they have willfully disobeyed the said orders.

16. In the case of **Econet Wireless Kenya Ltd vs Minister for Information and Communication of Kenya & Another [2005] eKLR**, Ibrahim J (as then was) stated as follows:-

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends, even to cases where the person affected by an order believes it to be irregular or void”

I am guided by the above authority.

17. The upshot of the matter is that I find merit in this applications and I grant the orders sought namely:-

(a) That the 1st and 2nd defendants and the officials of the 3rd defendant are found guilty of contempt for willfully disobeying the court orders issued on 22nd May 2009.

(b) That the 1st and 2nd defendants and the officials of the 3rd defendant are each fined Kshs.200,000/= to be paid within thirty (30) days from the date of this ruling. In default to serve four (4) months imprisonment.

(c) That the OCS Kamulu police station does enforce the orders herein and maintain peace in the event the contemnors refuse and neglect to pay the fine.

It is so ordered.

Dated, signed and delivered in Nairobi on this 3rd day of December 2020.

.....

L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the plaintiffs

No appearance for the defenants

Steve-Court Assistant