



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MILIMANI LAW COURTS**

**ELC NO.998 OF 2013**

**BEATRICE KANZAYIRE**

**EDDY NTIRAMPEBA.....PLAINTIFFS**

**=VERSUS=**

**ADAM GASONGO.....DEFENDANT**

**RULING**

1. This is a ruling in respect of Notice of Motion dated 10<sup>th</sup> March 2015 which seeks the following orders;-

**1) Spent**

**2) That the respondent do handover vacant possession of L.R No.14605,Karen-Nairobi.**

**3) That the Honourable Court be pleased to grant the applicants leave to forcibly evict the defendant from L R No.4605,Karen-Nairobi.**

**4) That the OCS Karen Police Station and or any other officer-in-charge acting under him do implement or supervise the implementation of the forceful eviction of the respondent.**

**5) That the respondent be arrested and committed to prison for disobedience of court order delivered on the 28<sup>th</sup> November,2014.**

**6) That the costs of this application be provided for.**

2. The application is brought by the applicants who are the administrators of the estate of Laurent Ntirampeba (deceased) who was a brother of the respondent herein. The dispute which has resulted in this application relates to LR No.14605 Karen Nairobi which was owned by the deceased. The applicants are widow and son respectively of the deceased.

3. The respondent had started intermeddling with the property of the deceased. This forced the applicants to file this suit. Unknown to the applicants, the respondent had obtained letters of administration in respect of the estate of the deceased on the ground that the deceased was not married. The said grant in favour of the respondent has since been revoked and the one held by the applicants upheld.

4. The applicants contend that the respondent has disobeyed a court order which was given on 28<sup>th</sup> November 2014. The applicants approached the officers at Karen Police Station to assist in enforcing the orders of 28<sup>th</sup> November 2014 but the officers declined because there was no eviction order. This is why the applicants have come to court seeking for the orders in this application.

5. The respondent opposed the applicants' application based on a replying affidavit sworn on 18<sup>th</sup> March 2015. The respondent contends that he was not served with the application which resulted in the orders which he is said to have disobeyed. He further states that he has never been served with any order arising from this suit and as such he cannot be guilty of contempt of an order which has never been served upon him.

6. I have considered the applicants' application as well as the opposition to the same by the respondent as well as submissions by the applicants. The respondent did not file any submissions and if any were filed the same are not in the court file. The only issues for determination in this application are whether eviction orders should be issued and whether the respondent is guilty of contempt of a court

order.

7. On the issue as to whether an eviction order should issue, this has to be considered in light of the circumstances of this case. As I indicated hereinabove, the respondent is a brother to the deceased. The respondent had obtained letters of administration in respect of the estate of the deceased. The letters have since been revoked vide a ruling made on 3<sup>rd</sup> October 2017 by Justice Achode. This now leaves the applicants as the rightful administrators of the estate of the deceased. What the applicants are seeking is a mandatory order at interlocutory stage. Such an order can only be given when there exist special circumstances which would justify its grant. In the ruling which resulted in the orders which the respondent is accused of disobeying, the late Justice Onguto had indeed found that the manner in which the injunctive orders were sought were mandatory in nature but he went ahead to grant the same because the circumstances obtaining were that even if the respondent was to be evicted from the suit property, that action would be justified even at the conclusion of the trial. Those circumstances still exist and in any case have been strengthened by revocation of grant which the respondent had obtained. I therefore find that the order of eviction is justifiable at this interlocutory stage.

8. On whether the respondent is guilty of contempt of a court order, there are certain things which have to be proved before one can be found to be in contempt of a court order. First, there has to be a valid court order asking the alleged contemnor to do or not to do a certain thing. Second, the order must be served upon the contemnor or the contemnor must have knowledge of the same. Third, the contemnor must have wilfully disobeyed the order.

9. In the instant case, there was a court order which was given on 28<sup>th</sup> November 2014 and issued on 16<sup>th</sup> December 2014. The terms of that order were very clear on what the respondent was not to do. The order was personally served upon the contemnor on 25<sup>th</sup> February 2015 as per the affidavit of service of the process server one Martin Mutua. Despite service of this court order, the contemnor has defiantly refused to obey the same.

10. As stated by **Romer L J in Hadkinson Vs Hadkinson (1952) ALL R 567**, it is the plain and unquantified 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 even void.

11. The contemnor may have opted to disregard the court order perhaps because he was under the mistaken belief that he had a grant in his favour which grant was issued on 15<sup>th</sup> February 2011. The contemnor should have first complied with the order or seek to have the order set aside but not to disobey it. The contemnor purported to make an application to set aside the ruling giving rise to the order which he disobeyed after he was served with the present application. This was too little coming too late. I find that the contemnor is guilty of contempt of the court order given on 28<sup>th</sup> November 2014 and issued on 16<sup>th</sup> November 2014. I convict him for contempt accordingly.

12. In sum therefore, I allow the application dated 10<sup>th</sup> March 2015 in the following terms.

*a. An order directing the respondent to be evicted from LR No. 14605, forthwith.*

*b. The OCS Karen Police Station to supervise the implementation of the court order.*

*c. The OCS Karen Police Station to arrest the respondent and bring him to court on any working day except Fridays between 9.00 am and 5.00 pm for purposes of being dealt with in accordance with the law.*

*d. The costs of this application to be paid by the respondent.*

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 24<sup>th</sup> day of January 2019.**

**E.O.OBAGA**

**JUDGE**

In the presence of;-

M/s Luvai for Mr Aboge for applicant

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**