



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 5 OF 2015

FRESCO BUSHLAND (K) LIMITED.....PLAINTIFF/APPLICANT

VERSUS

1. WARSAME MOHAMED ISSAAK

2. MOHAMED YUSUF HORAR

3. MOHAMED ALI MAHAT

4. NASTE DAUD

5. AGRICULTURAL DEVELOPMENT CORPORATION.....DEFENDANTS

RULING

1. On or about 7th November 2016, the parties herein recorded the following orders by consent before the Honourable Angote J who was then seized of the matter:-

1. That an injunction be and is hereby issued restraining the 1st-4th Defendants by themselves or their hirelings, employees, servants and/or any other person acting on their behalf from evicting or threatening the agents of the Plaintiffs from the structures or houses on 95,000 acres of land number LR No. 14248 leased to the Plaintiff situate in Kilifi County or demolishing the said houses or in any way acting in any manner that may affect the Plaintiffs rights and interest in the said structures, houses or land pending the determination of the suit.

2. That the application dated 5th October 2016 is marked as spent."

2. Subsequently by an Amended Notice of Motion application dated 8th January 2017, the Plaintiff sought orders to have the 1st, 2nd, 3rd and 4th Defendants summoned to personally attend Court to show cause why they should not be punished for disobeying the Court orders made on 7th November 2016. In addition the application sought orders to have the 1st to 4th Defendants declared contemnors and be punished by way of committal to jail for a period of six months for disobeying the said orders.

3. The Application dated 8th January 2017 was heard before me on 12th February 2018 and the Ruling thereon was scheduled for 7th June 2018. However, some two weeks after the application was heard and before the date scheduled for Ruling, the Plaintiff filed another application on 26th February 2018 seeking orders as follows:-

2. That the orders issued on 7th November 2016 be enforced by the OCPD Malindi by moving out the 1st to 4th Defendants, their agents and livestock from the 95,000 acres leased to the Plaintiff by the 5th Defendant pending the hearing and determination of this application inter partes;

3. That the Police in charge of Lango Mbaya Police Station be ordered to appear in Court and explain his continued supervision of disobedience of the orders issued on 7th November 2016;

4. That the Honourable Court do order the 1st to 4th Defendants to comply with the Orders issued by consent of the parties on 7th November, 2016; and

5. That the costs of this application be borne by the 1st to 4th Defendants.

4. I have considered the issues raised in the said application which was argued and recorded in a Skeleton file as the application dated 8th January 2017 seeking to commit the 1st to 4th Defendants to civil jail was pending a Ruling in the main file. It is apparent to me that the issues herein are similar to those in the application for contempt.

5. A Ruling in regard to the application dated 8th January 2017 was rendered herein on 31st October, 2018. In the said Ruling, I did indicate that there was no evidence availed to the Court to show that by the time that application was filed the Defendants had been furnished with documents to show the extent of the Plaintiffs' 95,000 acres so that they may be enjoined from encroaching thereon. The said application was dismissed.

6. As it were, that position had not changed by the time this application was filed. In the circumstances, it is my finding that the present application was extremely premature and without any merit whatsoever. The same is dismissed with costs to the 1st to 4th Defendants.

Dated, signed and delivered at Malindi this 21st day of February, 2019.

J.O. OLOLA

JUDGE