



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT BUNGOMA
CIVIL CASE NO. 100 OF 2010

**JOHN WEKESA KHAOYA(PERSONAL REPRESENTATIVE OF
ELIKA NANJALA MUTUKA).....1ST PLAINTIFF**

TERESINA NAMAEMBA.....2ND PLAINTIFF

VERSUS

PAUL JUMA WEKESA.....1ST DEFENDANT

JAMIN WASIKE KITUYI.....2ND DEFENDANT

JOSEPH SIMIYU KITUYI.....3RD DEFENDANT

JAMES ROBERT ETYIANG.....4TH DEFENDANT

HENRY NASIO.....5TH DEFENDANT

JOHN MASIKA WEKESA.....6TH DEFENDANT

MANJARO KUNDU TITILA.....7TH DEFENDANT

MZEE KUNDU KIMALILO.....8TH DEFENDANT

CHEMIATI WAFULA.....9TH DEFENDANT

EMMANUEL WAMALWA.....10TH DEFENDANT

BENSON WAMALWA JUMA.....11TH DEFENDANT

SOLOMON WAMALWA JUMA.....12TH DEFENDANT

WAMALWA WANYONYI.....13TH DEFENDANT

VINCUS JOSHUA.....14TH DEFENDANT

R U L I N G

This suit illustrates the pitfalls that await parties who are zealous in rushing to Court for interlocutory orders but thereafter recede into a deep slumber.

The plaintiffs herein filed this suit on 11th October 2010 seeking various orders against the defendants in respect to land parcel **NO E.BUKUSU/ S.NALONDO 1945**. On 10th November 2010 the plaintiffs filed a Chamber Summons seeking orders of temporary injunction

to restrain the defendants, by themselves, their servants and/or agents from tilling, dealing transferring or working on the land parcels **NO E.BUKUSU/S.NALONDO/2725** and **2727** pending the outcome of this suit. That order was granted by **OMOLLO J** on 2nd October 2013 who went on to direct that the suit be heard on 10th February 2014. Notwithstanding that directive by **OMOLLO J** and a further order by **MUKUNYA J** dated 20th July 2015 advising the parties to withdraw all the pending applications herein so that the trial can proceed, this suit is still pending nine (9) years later. I am surprised that the suit has survived the yolk of dismissal since then.

I now have before me the plaintiffs' Notice of Motion dated 5th October 2018 seeking the main prayer that this Court summons the defendants to show cause why they should not be fined Kshs. 200,000/= or jailed for six (6) months for being in contempt of the orders of injunction issued on 2nd October 2013 (the application wrongly refers to the date as 7th October 2013). The gravamen of the application which is supported by the affidavit of **JOHN WEKESA KHAOYA** the 1st plaintiff herein is that the 2nd defendant, in disobedience to the orders of injunction, have continued to sell parcel **NO E.BUKUSU/N.NALONDO/2725**.

When the application came up for hearing on 9th May 2019, I directed that although it was not opposed, I would nonetheless deliver a ruling on the same.

Order 40 Rule 6 of the Civil Procedure Rules provides as follows:-

“Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the Court orders otherwise.”
Empasis added

Having obtained the order of temporary injunction 2nd October 2013, it was required that the plaintiff ensures the hearing and determination of this suit within twelve months otherwise the order would lapse. **OMOLLO J** even went ahead to give the plaintiffs a date for the hearing of the main suit on 10th February 2014. However, rather than take advantage of that date and notwithstanding **MUKUNYA J**'s order that the parties abandon their applications herein and proceed to fix the suit for hearing, the plaintiffs made a comfortable bed using the orders of temporary injunction and, perhaps to ensure minimum disturbance, a mosquito net made out of the same orders and went into a deep slumber. Not even the orders of **HON. E. N. MWENDA (DEPUTY REGISTRAR)** issued on 21st February 2018 directing the plaintiffs that this suit would be dismissed if there was no compliance with the orders issued by **MUKUNYA J** on 20th July 2015, could awaken the plaintiffs.

Perhaps they will now wake up when I inform them, as I hereby do, that the orders issued by **OMOLLO J** on 2nd October 2013 injuncting the defendants lapsed on 2nd October 2014 and cannot be the basis upon which the defendants can be cited for contempt. There is no evidence that the orders issued on 2nd October 2013 were even extended. The record shows that they were not and it is highly un-likely that such orders could still be in force six (6) years later. That would be an abuse of the Court process. The route I took in **SIMON NJAGI NJOKA .V. GATIMU MURIITHI & 5 OTHERS 2017 eKLR** is that one an order has lapsed, it ceases to have any force of law. The term lapse is defined in **BLACK'S LAW DICTIONARY** as:-

“The termination of a right or privilege because of a failure to exercise it within some time limit or because a contingency has occurred or not occurred.”

The plaintiffs' Notice of Motion dated 5th October 2018 is devoid of any merit. It is accordingly dismissed with no orders as to costs. I also direct that the plaintiffs take the earliest dates in the registry for the hearing of this suit.

It is so ordered.

Boaz N. Olao.

J U D G E

30th May 2019.

Ruling dated, delivered and signed in Open Court this 30th day of May 2019.

1st plaintiff present

Defendants absent

Mr Kundu for 1st and 4th defendants present

Joy/Felix – Court Assistants - present

Court: - Hearing 4th November 2019. Hearing notice to issue.

Boaz N. Olao.

J U D G E

30th May 2019.