



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 187 OF 2015

JAMES KAMAU WAWERU.....PLAINTIFF/APPLICANT

VERSUS

ZIPPORAH WAMAITHA MWAURA....DEFENDANT/RESPONDENT

RULING

1. In the Application dated 14th August, 2017, the Plaintiff is seeking for the following orders:

a. That this Honourable Court be pleased to find the Defendant/Respondent in contempt of court for deliberately disobeying court orders issued by Honourable Justice Gicheru on 24th September, 2015.

b. That upon grant of prayer 3 above the Defendant/Respondent be committed to civil jail for a period of six (6) months.

c. That the costs of this Application be provided for.

2. The Application is premised on the grounds that the Plaintiff bought a parcel of land known as Mavoko Town Block 2/6723; that the Defendant fenced off the said land; that the court restrained the fencing of the land and that despite being aware of the order of the court, the Defendant continued to develop the suit land.

3. The Plaintiff averred that the Defendant was served with the orders of the court for the maintenance of *status quo* on 10th March, 2017 but has continued disobeying those orders.

4. In response, the Defendant deponed that she purchased the suit land in the year 2000 whereafter she fenced it; that by the time the order of *status quo* was made, she had already taken possession of her three plots, erected a temporary structure and allowed a worker to live in the structure.

5. In the Supplementary Affidavit, the Plaintiff deponed that the Defendant has breached the court order by developing the suit land and that she should be committed to civil jail.

6. Both the Plaintiff's and the Defendant's advocates filed brief submissions which I have considered.

7. In the Application dated 17th July, 2015, the Plaintiff sought for an interim order of injunction restraining the Defendant from trespassing, alienating, constructing or continuing to construct any structures on land known as Mavoko Town Block 2/6723 pending the hearing of the suit.

8. When the Application came up for hearing on 24th September, 2015, the advocates for both parties entered into a consent to maintain the *status quo* pending the hearing and determination of the suit.

9. The Defendant has argued that by the time the order of *status quo* was made on 24th September, 2015, he had fenced the suit property and constructed a temporary structure which was occupied by her employee.

10. I have perused the Application that was filed by the Plaintiff on 29th July, 2015. The said Application does not have any photograph showing the status of the suit property as at that date. Indeed, in the said Application, the Plaintiff deponed that when he visited the land, he found a small portion of the land had been fenced and that is when he fenced the entire land. Later on, he found a man residing in a tin structure on the suit land.

11. The fenced property and the tin house, has been exhibited in the Plaintiff's present Application. The Plaintiff has also exhibited photographs showing a foundation that is under construction. However, from the said photographs, it is not clear when the said foundation was done.

12. Considering that an order of *status quo* means "*the present situation, the way things stand as at the time the order is made, the existing things*" (***Shimmers Plaza Limited vs. National Bank of Kenya Limited [2015] eKLR***), and in the absence of evidence to show that the Defendant undertook any development after the order of *status quo* was made, I am unable to find with certainty that the Defendant is in contempt of the order of the court.

13. For those reasons, I dismiss the Application dated 14th August, 2017 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 13TH DAY OF APRIL, 2018.

O.A. ANGOTE

JUDGE