



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. MISC. APPLN. NO. 75 OF 2013

RASHID MUTUA.....1ST PLAINTIFF

MUKAI MBAI MUVINGA2ND PLAINTIFF

ANGELINE MUTILE MUTHOKA3RD PLAINTIFF

KYALO NYUMBU KYAKA4TH PLAINTIFF

VERSUS

PETER KYALO MUTUA.....1ST DEFENDANT

NZIOKI WILSON NDUTU2ND DEFENDANT

DANIEL MULANDI KIKUNZE3RD DEFENDANT

ROSEMARY K. MUTUNGA4TH DEFENDANT

JULIUS KIOKO5TH DEFENDANT

RULING

1. This Ruling is in respect to the Applications dated 30th June, 2017 and 21st September, 2017. In the Application dated 30th June, 2017, the Plaintiffs are seeking for the following orders:

a. That Defendants/Respondents herein to be cited for contempt and committed to civil jail for six (6) months.

b. A warrant of arrest be issued against the Defendants/Respondent to show cause why they should not be committed to civil jail or any such sentence as the court may deem fit to make up for that blatant breach and contempt of court order issued and in the alternative the Respondents be ordered to herewith and immediately purge the contempt of court.

c. Costs of this Application be provided for.

2. The Application is premised on the grounds that in disregard of the orders issued on 22nd May, 2014, the Defendants have proceeded to the suit land and commenced sub-dividing, allocating and fencing the land; that the Defendants' disregard of the orders of the court is meant to create anarchy and chaos and that the Defendants were personally served with the orders of the court.

3. According to the Plaintiffs' Affidavit, on 8th May, 2017, the Defendants invaded the suit land and sub-divided it and should therefore be committed to civil jail for disobeying the orders of the court.
4. In response to the Application, the 1st Defendant averred that the suit land was sub-divided way back on 8th April, 2013; that as at 22nd May, 2014, sub-division and allocation of the land had been done and that the fencing of the land was done by individual members after the plots were allocated to them in September, 2013.
5. In the Application of 21st September, 2017, the Plaintiffs are praying for an order that the OCS, Athi River Police Station should ensure compliance of the orders of the court and that there be a stay of proceedings in CMCC No. 1151 of 2013 Machakos.
6. In response, the 1st Defendant deponed that Machakos CMCC No. 1151 of 2013 and the present suit are totally different; that the Plaintiffs herein are not parties in CMCC No. 1151 of 2013 and that the issue that the two suits do not involve the same parties was determined by a Ruling delivered on 18th February, 2015.
7. The parties filed brief submissions which I have considered.
8. The record shows that on 22nd May, 2014, the court directed that the parties do maintain the current obtaining *status quo*. The said *status quo* was not defined.
9. The term *status quo* was defined in the case of ***Shimmers Plaza Limited vs. National Bank of Kenya Limited [2015] eKLR*** to mean "*the way things stand as at the time the order is made, the existing state of things.*"
10. The Defendants have annexed the share certificates by "*Athi River Slum Dwellers*" showing that the said certificates were issued in the year 2013. Indeed, the Plaintiffs did not adduce any evidence to show that the sub-division of the suit land was done subsequent to the order of *status quo* being made.
11. In the absence of any evidence to show that the Defendants sub-divided, sold or fenced the land after the order of 22nd May, 2014, I find the Application dated 30th June, 2014 to be unmeritorious.
12. Having found the Defendants not guilty for disobeying the orders of the court, I do not see why I should direct the police to enforce the orders of this court. The parties should fix this matter for hearing so that the issue of ownership can be determined expeditiously.
13. Although the Plaintiffs are seeking for a stay of Machakos CMCC No. 1151 of 2013, not all the parties in that matter are also parties in this matter. In any event, I have read the Ruling of the Chief Magistrate in CMCC No. 1151 of 2013 in which the court held that it does not have the pecuniary jurisdiction to entertain the matter.
14. For those reasons, I dismiss the Applications dated 30th June, 2017 and 21st September, 2017 with costs.

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

O.A. ANGOTE

JUDGE