



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.254 OF 2015

JOHN LAGAT.....1ST PLAINTIFF

ROBERT LANGAT.....2ND PLAINTIFF

KENNETH KOSIMBEL.....3RD PLAINTIFF

CYRUS KILONZI.....4TH PLAINTIFF

JEFY RONO.....5TH PLAINTIFF

PROF. EDWARD TANUL.....6TH PLAINTIFF

VERSUS

NAFTALI KABERU1ST DEFENDANT

NATIONAL ENVIRONMENT MANAGEMENT

AUTHORITY (NEMA).....2ND DEFENDANT

AND

MOSES RUTO.....PROPOSED INTERESTED PARTY

RULING

(Application for contempt of an order of injunction; applicant claiming that there are interim orders in place which the respondent has breached; record showing that interim orders lapsed more than one and a half years to the date of filing of the application; applicant not moving his application for injunction; no interim orders in place that can be said to have been breached; application dismissed)

1. The application before me is that dated 19 February 2018 filed by the plaintiffs. The application is brought pursuant to the provisions of Order 40 Rule 2 (3) and 10 of the Civil Procedure Rules, and the substantive prayer is that the defendants/respondents be found guilty of contempt of the court orders issued on 15 September 2015. The application is opposed and before going to the gist of it, I will give a bit of a background to the same.

2. This suit was commenced through a plaint which was filed on 16 September 2015. In the plaint, the plaintiff/applicant contended that the 1st defendant, with the authority of the 2nd defendant, was constructing a slaughter house within Belbur Farm in Njoro, which is next to a stream that drains into Kasiminde dam the only water source for the surrounding community. It was averred that the slaughter house would make the nearby estates inhabitable because of the foul smell from bowels and blood of slaughtered animals. In the suit, the applicants have asked for orders of permanent injunction to stop construction of the slaughterhouse and a declaration that the approval of the project by the 2nd defendant is null and void.

3. Together with the plaint, the applicants filed an application for injunction seeking to stop the construction of the slaughterhouse pending hearing and determination of the suit. The application came before me ex-parte on 16 September 2015 when I issued interim orders of injunction to stop construction pending inter partes hearing of the application. The matter was fixed for inter partes hearing on 5 October 2015 when counsel for the applicants sought leave to file a supplementary affidavit which I granted and extended the interim orders. I

directed that the matter be heard inter partes on 12 November 2015. I did not sit on 12 November 2015 and the matter was mentioned before the Deputy Registrar, but only Mr. Mwangi, learned counsel for the 1st defendant/respondent appeared and the matter was stood over generally. Mr. Oumo, learned counsel for the applicants did later appear before the Deputy Registrar for extension of interim orders, which were duly extended, and the Deputy Registrar directed that the case be mentioned on 3 May 2016. On 18 January 2016, an application was filed by one Moses Ruto seeking to be enjoined to the proceedings as interested party. I directed that it be served and it be heard inter partes on 3 May 2015. Unfortunately, I was not available on 3 May 2015 and the matter was mentioned before the Deputy Registrar, who directed that the case be mentioned before me on 20 May 2016 for directions. On the said date, I did give directions that the application dated 3 May 2015 be heard on 22 September 2016 and I extended interim orders to that date. Another application dated 6 July 2016 was filed seeking orders to strike out the plaint for not disclosing a cause of action. The application came before me on 13 July 2016, and I directed that it be served for inter partes hearing on 22 September 2016. Nobody appeared to prosecute the said application dated 6 July 2016 and I dismissed it summarily. The matter lay quiet until 13 October 2016 when an application dated 12 October 2016 was filed by the 1st defendant seeking orders to reinstate the application dated 6 July 2016. I directed that the application be served and a date be taken in the registry. Nothing happened until this application was filed on 19 February 2018.

4. In this application, the plaintiffs/applicants have complained that in violation of the court orders of 16 September 2016, the 1st defendant/respondent is busy erecting permanent structures. The applicants have thus urged me to find the respondent to be in contempt of court.

5. The respondent filed Grounds of Objection to oppose the motion. It is averred that there are no orders stopping the plaintiff (sic) (probably meant 1st defendant) from development, as the alleged orders have expired and were never extended. It is also contended that the applicant is guilty of delaying the prosecution of the suit, and the application, since 13 October 2016.

6. There is also a replying affidavit filed by Moses Ruto to oppose the motion. However I will disregard this reply as the said Moses Ruto is not a party to these proceedings as his application to be enjoined to these proceedings has not been prosecuted.

7. Both Mr. Oumo for the applicant, and Mr. Ikua for the respondent, filed written submissions which I have taken note of. Mr. Oumo's position is that the interim orders in issue were extended on 5 October 2015 and subsequently it was ordered that status quo be maintained pending the hearing of the main suit. He has asked that the respondent be found guilty of contempt.

8. On his part Mr. Ikua's main thrust is that there are no orders of status quo. His view is that there are no interim orders in place as they were never extended. He also submitted that pursuant to Order 40 Rule 6, interlocutory orders of injunction lapse after one year and wondered how interim orders could remain in place for over 17 months.

9. There are only two issues, the first being whether there are interim orders of injunction in place, and the second, if they are in place, whether there has been a violation of these orders.

10. I have already set down the record. The last time I extended the interim orders was on 20 May 2016, when I extended the said orders to 16 September 2016. On this date, counsel for the applicant did not appear and the interim orders were not extended. In fact from the record, since 20 May 2016, the applicants have not moved their case until they filed this application for contempt on 16 February 2018, which is more than one and a half years since the matter was in court. The complaint being raised is that the respondent was building on the premises early in the month of February 2018. By this time, there were no interim orders in place. It follows that since there were no interim orders in place, it cannot be said that the 1st respondent was in breach of any orders. Neither have I seen any status quo orders that have been made in this suit as claimed by Mr. Oumo which the respondent could be alleged to be in breach of.

11. I do not think that there is need to say more. There not being any interim orders and no status quo orders that could be said to have been breached, I find no merit in this application and it is dismissed with costs.

12. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 28TH day of June 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Mr. Oumo for the plaintiffs/applicants.

Mr. Ikua for the 1st defendant/respondent.

No appearance for the 2nd defendant

Ms. Ogange holding for Mr. Konosi for intended interested party.

Court Assistant :Nelima Janepher .

JUSTICE MUNYAO SILA

