



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

HCC No. 154 OF 2010

DANIEL LANGAT.....1ST PLAINTIFF

GEOFFREY LANGAT.....2ND PLAINTIFF

VERSUS

FRANCIS MAINA MWANGI.....1ST DEFENDANT

TERESIA MUTHONI MAINA..... 2ND DEFENDANT

RULING

1. This ruling is in respect of two applications: defendants' Notice of Motion dated 9th February 2017 and Notice of Motion dated 8th March 2017 filed by counsel for the plaintiffs. Notice of Motion dated 9th February 2017 is an application brought under Section 5(1) of the Judicature Act. The following orders are sought in the application:

a) That this honourable court be pleased to hold Daniel Langat and Geoffrey Langat in contempt of court orders and commit them to civil jail for a period of 6 months or as the court deems fit, for disobeying court orders made on the 27th day of June 2014.

b) Spent.

c) That in the alternative this honourable court do order the attachment of the 1st and 2nd defendants/respondents herein, Daniel Langat and Geoffrey Langat properties as a consequence of the breach or disobedience of the court orders issued on 27th June 2014.

d) That the orders granted herein be executed and enforced by OCPD Molo.

e) That costs of this application be provided for.

2. The application is supported by supporting affidavit sworn by Teresia Muthoni Maina on 9th February 2017 and a further affidavit sworn by her on 16th October 2017. It is deposed in the affidavits that on 27th June 2014, the court delivered a ruling in which stay of execution of the judgment herein was granted. The ruling was delivered in the presence of Mr Iluma, counsel for the plaintiffs. Despite knowledge of the order, the plaintiffs entered the suit property, cut down trees and started farming activities thereon. Since the ruling was delivered in the presence of the plaintiffs' counsel, the plaintiffs had knowledge of the stay orders.

3. Despite being served with Notice of Motion dated 9th February 2017, the plaintiffs did not file any response to the application. Instead, on 10th March 2017, the plaintiffs' advocates filed Notice of Motion dated 8th March 2017 pursuant to which the advocates seek leave to cease acting for the plaintiffs on grounds that the plaintiffs have failed or refused to get in touch with them after the judgment and ruling of 27th June 2014 were delivered despite being called upon to give instructions. On 16th March 2017, in the presence of counsel for the plaintiffs, the plaintiffs' Notice of Motion dated 8th March 2017 was scheduled for inter parte hearing on 2nd May 2017 and counsel was ordered to serve his clients, the plaintiffs. Since then, despite being duly served, counsel for the plaintiffs has not attended court on the various occasions that Notice of Motion dated 9th February 2017 and Notice of Motion dated 8th March 2017 have come up for inter parte hearing.

4. Being satisfied that counsel for the plaintiffs had been served with notice of hearing of both applications, I allowed counsel for the defendants to proceed. He urged the court to allow Notice of Motion dated 9th February 2017 and dismiss Notice of Motion dated 8th March 2017.

5. I have considered the applications and the submissions. Counsel for the plaintiffs having failed to attend court to prosecute Notice of Motion dated 8th March 2017, the said application is hereby dismissed. No order on costs.

6. A perusal of the record herein shows that on 27th June 2014 ruling in respect of the 2nd defendant's Notice of Motion dated 14th January 2014 was delivered in the presence of counsel for the plaintiffs. The court granted stay of execution of the judgment and stated as follows:

There is a danger that if the execution of these orders is not stayed, the plaintiffs by virtue of being the registered owners may deal with the property in a manner that is detrimental to the applicant's interest and to the pending appeal. It is therefore my finding that it is in the interest of justice that the status quo of the property, that is to say, the current registered ownership itself and the respondents' occupation of the four acres thereof be maintained

7. It should be noted that the 2nd defendant was the applicant as regards ruling delivered on 27th June 2014 while plaintiffs were the respondents. The judge defined the status quo as at the date of the ruling to be that the plaintiffs were in occupation of the suit property. They were to remain in occupation pending the hearing and determination of the appeal. That they were in occupation is not surprising considering that their case was one seeking a declaration that they had become entitled to the suit property by adverse possession having entered and remained in continuous uninterrupted occupation of it. I therefore found it rather strange that the plaintiffs are being accused of entering the suit property in violation of the orders of stay of execution.

8. In the judgment dated 7th November 2013, M. J. Anyara Emukule J. stated:

7. Having examined the sale agreement, the proceedings before the Molo Land Disputes Tribunal along with the evidence of the two plaintiffs and PW3, the Rift Valley Manager from ICDC, I am persuaded on the balance of probability that firstly, the defendants (husband and wife) sold the first two acres to the first plaintiff per the agreement of 22nd June 1995, and a further two acres to the second plaintiff per direct payment of Kshs.56, 000/= to ICDC on behalf of the first defendant.

8. It is also clear that the plaintiffs quite rightly took possession with the consent of the defendants. The clashes of 1992 and 1997 (Election periods) were traumatizing to residents of those areas, and the first defendant having disappeared from the area after selling the suit land, no effort was made to secure consent from the Land Control Board for sale and transfer of the suit land. The defendants too took no effort to rescind the Agreement of Sale, and the plaintiffs continued to enjoy quiet, peaceful, continuous and uninterrupted possession of the respective two acres of land.

9. Though the second defendant put up a spirited denial of the two transactions, and referred to the plaintiffs as invaders and trespassers, I find that they were lawful in occupation of the said parcel of two acres each.

9. It is thus clear again that the plaintiffs were in lawful occupation of the suit property. The issues of occupation and possession were determined by the trial court. I cannot revisit them. The applicant has not tendered any evidence that the plaintiffs have moved to occupy an area different from that which they occupied as at the time judgment and ruling in respect of the application for stay was delivered. In short, I have no material upon which to conclude that there has been disobedience of the orders made on 27th June 2014. In view of the foregoing, Notice of Motion dated 9th February 2017 must fail.

10. In the end, Notice of Motion dated 9th February 2017 and Notice of Motion dated 8th March 2017 are both dismissed. No order on costs.

Dated, signed and delivered in open court at Nakuru this 19th day of June 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Tengekyon for the plaintiffs

Ms Gitau holding brief for Mr Karanja for the defendants

Court Assistants: Gichaba & Lotkomoi