



**Rono v Ng'ang'a; Mulwa & 2 others (Interested Parties) (Environment & Land Case 483 of 2013) [2018] KEELC 4911 (KLR) (13 July 2018) (Ruling)**

*Daniel Kipkosgei Rono v James Kariuki Ng'ang'a, Angela Mulwa, Ambrose Mbithe Mulwa & Moriah Properties Ltd [2018] eKLR*

Neutral citation: [2018] KEELC 4911 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 483 OF 2013**

**BM EBOSO, J**

**JULY 13, 2018**

**BETWEEN**

**DANIEL KIPKOSGEI RONO ..... PLAINTIFF**

**AND**

**JAMES KARIUKI NG'ANG'A ..... DEFENDANT**

**AND**

**ANGELA MULWA ..... INTERESTED PARTY**

**AMBROSE MBITHE MULWA ..... INTERESTED PARTY**

**MORIAH PROPERTIES LIMITED ..... INTERESTED PARTY**

**RULING**

1. The application under consideration is the plaintiff's Notice of Motion dated 31st July 2015 seeking orders that summons do issue to the respondents together with the Ngong County Land Registrar and Mr Kithinji Marete to show cause why they should not be committed to civil jail for contempt of court. The plaintiff has further sought an order for committal of the said persons to civil jail for a period of 6 months and in the alternative, an order for sequestration by attachment of the respondents' properties. Further, the applicant seeks a conservatory order to restrain dealings in new Title Numbers Ngong/Ngong/61881 upto Ngong/Ngong/61891 being subdivisions out of Parcel Number Ngong/Ngong/56485 pending the hearing and determination of this suit.
2. The plaintiff's case is that he purchased from the defendant the property known as Ngong/Ngong/9064 (Parcel No 9064). That unknown to him, the defendant fraudulently subdivided the said Parcel No 9064 into Parcels Nos. Ngong/Ngong/56584 and 56585.



3. The plaintiff contends that on 29th November 2013, the court issued orders restraining the sale, transfer or alienation of Titles Nos Ngong/Ngon/56584 and 56585 being subdivisions out of Title Number Ngong/Ngong/9064. It is further contended that on 20th May 2015, Mr. Kithinji Marete, advocate, gave an undertaking before the court on behalf of the interested parties not to subdivide, develop and or transfer Title Nos Ngong/Ngong/56484 and 56485 pending the hearing and determination of this suit.
4. The applicant further contends that in disregard of the court order and the undertaking, the Parcel Register for Title No Ngong/Ngong/56485 was closed for subdivision on 31st October 2013 and has been subdivided into new Parcel Nos. 61881 - 61891. The plaintiff claims that the interested parties have completed developments on the suit properties. He avers that the subdivision and subsequent transfers were undertaken despite having lodged a caution to bar any dealings on the suit properties. It is the plaintiff's contention that the actions of the respondents are intended to defeat his legitimate claim and that unless this court takes appropriate action, the hearing and determination of this suit will be rendered nugatory.
5. The interested parties oppose the application through a replying affidavit sworn on 26/9/2017 by the 1st interested party. Their case is that the 3rd interested party transferred the property to the 1st and 2nd interested parties on 19th February 2013 way before the orders were issued on 23rd April 2013. The respondents contend that before issuance of the orders dated 23<sup>rd</sup> April 2013, the 1st and 2nd interested parties as vendors had entered into sale agreements with third parties and that as at 15th March 2013, the said interested parties were not in control of the suit property because they had already sold the properties to the purchasers. The interested parties denied being in contempt of orders which were issued over a month after they handed the suit property to the purchasers who had set in motion the process of subdivision and transfer before the orders were granted.
6. At the hearing, Mr Mengich, counsel for the plaintiff/applicant submitted that interim orders granted by the court on 22nd April 2013 were varied by the court on 20th May 2013 restraining the subdivision, transfer, alienation or the undertaking of further construction on Parcel Nos 56584 and 56585. He contended that the orders were confirmed on 29th November 2013. He further submitted that the orders were within the knowledge of the contemnors who participated in the proceedings. The plaintiff cited the case of *Basil Criticos v Attorney General & others* (2012)eKLR and argued that knowledge of a court order supersedes personal service.
7. Counsel for the plaintiff argued that the register for Parcel No 56485 was closed after subdivision into Parcel Nos 61881-61891 on 31st October 2013 despite subsisting interim orders which had been issued on 22nd April 2013 which action amounts to contempt. It was further submitted that the respondents proceeded with developments on the suit property despite the court directing the maintenance of status quo on 29th November 2013. Counsel further submitted that the defendant and the interested parties acted in gross violation of the court orders and should be cited and punished for contempt. The court was referred to the case of *R v Kenya School of Law & 2 others Ex parte Juliet Wanjiru Njoroge & 5 others* (2015) eKLR.
8. The interested parties in submissions dated 3rd October 2017 argued that they did not defy the interim orders granted on 22nd April 2013 and 20th December 2013 and can therefore not be held in contempt. Counsel submitted that the orders issued had been overtaken by events as the interested parties had entered into contracts with third parties over the sale of the suit property long before the orders were issued. The interested parties relied on the case of *African Management Communication International Ltd v Joseph Mathenge Mugo* (2013) eKLR as cited in *Mathew Kiptoo & another v*



- Ronald Chelangat T/A Yatrin Investments (2015) eKLR where the court found no contempt where the act sought to be restrained had taken place earlier.
9. I have carefully considered the tenor and import of the application. I have also considered the parties' rival affidavits and submissions. The single issue falling for determination in this application is whether the respondents have acted in contempt of the order made by Nyamweya J on 29/11/2013 and extracted on 20/12/2013 and are therefore liable to be punished for contempt.
  10. The application was expressed to be brought under Sections 1A, 1B, 3A, and 63 (c) (d) and (e) of the Civil procedure Act, and Order 51 Rule 1 and Order 40 of the Civil Procedure Rules. It was also expressed to be brought under Section 12 of the Environment and Land Court Act. I should observe at this point that contempt proceedings in Kenya are now dealt with within the framework of the Contempt of Court Act, No. 46 of 2016. It is appreciated that the present application was brought before the enactment of the Contempt of Court Act.
  11. I have perused the court record. Firstly, there is no record of any proceedings that took place on 20/5/2015, the day it is contended an undertaking was made to the court. The record confirms indeed Nyamweya J rendered a ruling on 29/11/2013 and ordered the maintenance of a status quo pending the hearing and determination of this suit. The formal order was extracted on 20/12/2013. There is however no evidence that the said order was served on the parties and on the Land Registrar of the concerned Land Registry. Similarly, the affidavit in support of the application is quiet on this important aspect of service of the court order.
  12. In his submissions, Mr Mengich focused on orders that existed prior to 29/11/13. The notice of motion under consideration however sought contempt orders in relation to disobedience of the order made on 29/11/2013.
  13. A court order pronouncing a verdict of guilty for contempt is a serious indictment on the person adjudged guilty of contempt. I do not for a moment think that this Court would be acting properly if I were to find any of the respondents guilty of contempt without any mention of the steps that were taken by the applicant to notify the respondents and the Land Registrar about the existence of the court order and the grave consequences of disregarding the court order. Secondly, I have perused the parcel registers of the suit properties attached to the affidavit in support of the application. None of the entries exhibited to the court was made after 29/11/2013, the date when Nyamweya J issued the order which is the subject of the notice of motion. Similarly, there is no evidence of deliberate back-dating of the entries.
  14. In light of the above reasons, the court is not satisfied that a proper basis has been laid to warrant the invocation of the court's ultimate power to punish for contempt. The court will nonetheless send a clear message to the parties that disregarding or disobeying a court order has grave consequences and whenever a proper basis is laid and the court is properly invited to intercede, the court exercises that power, with severe consequences to the contemnors.
  15. The second limb of the application seeks an interim conservatory order. In my view, the order issued on 29/11/2013 was an adequate conservatory order. The best that this court can do is to direct that the order issued on 29/11/2013 preserving Parcel Numbers Ngong/Ngong/56584 and 56585 being subdivisions from Ngong/Ngong/9064 shall preserve, in the same manner, all subdivisions out of Parcel Numbers Ngong/Ngong/56584 and Ngong/Ngong/56585.
  16. The upshot is that the notice of motion dated 31/7/2015 is allowed only to the above extent. The plea for contempt orders is rejected. Each party shall bear own costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 13TH DAY OF JULY 2018.**



**B M EBOSO**

**JUDGE**

In the presence of:-

Ms Kirui Advocate for the Plaintiff

Mr. Oguye holding brief for Mr Wandabwa for the Defendant

Mr Oguye holding brief Mr Kimani for the Interested Parties

