



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELC NO. 18 OF 2018

MARTHA WANJIKU NYUTU.....1ST PLAINTIFF/APPLICANT

PATRICK NYUTU MWANGLI.....2ND PLAINTIFF/APPLICANT

ANN MARGARET WAMBUI NDUATI.....3RD PLAINTIFF/APPLICANT

VS

SUSAN MWIHAKI NJOROGE.....1ST DEFENDANT RESPONDENT

KAMAU MATEGA.....2ND DEFENDANT/ RESPONDENT

THE LAND REGISTRAR -MURANGA.....3RD DEFENDANT/ RESPONDENT

RULING

1. On the 29/7/11 the Hon Mr. Justice Serгон issued the following orders *interalia* in the suit;
 - a. That a temporary injunction is hereby issued directed against the 1st Defendant, her agents, servants and anybody claiming or working under her from in any way committing any acts of waste interference with the Plaintiffs' peaceable occupation and utilization of parcels No. s Loc 6/Muthithi/1433, 1723 and 1722 now reconsolidated into parcel No Loc 6/Muthithi/1041 pending the hearing and determination of this suit.
 - b. That the orders herein do operate as stay of the proceedings in Muranga PMCC LDT No 89 of 2007.
 - c. That an order of prohibition is hereby issued directed against the Land Registrar Muranga, the 3rd Defendant herein prohibiting any transactions in Parcel No Loc 6/Muthithi/1041 pending the hearing and determination of this suit.
2. On the 10/2/17 the Plaintiff/Applicants filed an application under Order 40 rule 3 of the Civil Procedure Rules seeking orders *interalia*;
 - a. Spent
 - b. That the OCS Muthithi Police station be commanded by an order of this Court to enforce the orders dated the 29/7/11 and to remove and prevent by force the respondent and her children from entry and or usage of the lands as captured in the order of 29/7/2011.
 - c. That this honorable Court punish Susan Mwihaki Njoroge by imprisonment for a period not exceeding six months for the willful and unlawful disobedience of the Court orders dated the 29/7/2011 issued by Hon Justice Serгон.
 - d. That this Court do issue such other directions and orders as it may deem fit.
3. The application is based on the grounds that the 1st Defendant/Respondent and her children have used force to take over the land; that such acts amount to willful and contemptuous disobedience of the Court order; there is a risk of anarchy as the Plaintiffs children are threatening to forcefully evict and confront the 1st Defendant and her children; the OCS Muthithi has not intervened citing lack of orders from the Court to do so; willful disobedience of Court orders are punishable in law.
4. The application is supported by the affidavit of Martha Wanjiru Nyutu, the 1st Plaintiff who deponed on her own behalf and on behalf of

the 2nd and 3rd Plaintiffs. She stated that the 1st Defendant with full knowledge of the existence of the Court orders, together with her sons, have through force cultivated and committed acts of wastage on the suit lands. She annexed photographs showing freshly dug up land. That she reported the matter to the Police station at Muthithi who have not intervened. That the 1st Defendant's acts are in disobedience of the Court orders issued on the 29/7/11.

5. The 1st Defendant opposed the application and vide a replying affidavit filed on the 24/2/17 termed the application scandalous and that it offends Order 40 rule 6 of the Civil Procedure Rules, 2010. She argued that the interlocutory orders lapsed on 29/7/12 after one year and the application lacks the legal stratum and hence an abuse of the process of the Court. She maintained that the application is frivolous and the only purpose is to delay the hearing of the suit. She contended that she has not encroached on the Plaintiffs' land and the application is without any basis. She inquired why the Plaintiffs have not reported the matter to the Police station if indeed she had encroached the suit land. That the Plaintiffs have not demonstrated how the impugned orders have been disobeyed and hence the application is devoid of merit. In any event, she argues, the suit lands parcel No.s Loc 6/Muthithi/1433, 1723 and 1722 are non-existent. She opined that she is now the registered owner of No. s Loc 6/Muthithi/1041 and termed the Plaintiffs as mere busy bodies.

6. The 1st Plaintiff further deponed in a further affidavit filed on the 9/3/17 that the 1st Defendant and her sons after service of the application continued to commit acts of waste on the suit land as thus; on 4/3/17 dug up more land and destroyed the water pipe that supplies water to her house; harvested the farm produce which included nappier grass and bananas. She annexed photographs showing the 1st Defendant and her son on the suit land.

7. On the 31/10/17 the 1st Plaintiff filed another affidavit in support of the application and stated that on 20/10/17 the 1st Defendant and her sons entered into her land and destroyed/cut down trees wantonly and annexed photographs in support. That they also attacked her husband. She has annexed a P3 report showing injuries sustained. Additionally, that the 1st Defendant and her sons laid a siege at her house with pangas with threats to physically harm her. She has annexed photographs in support.

8. Further the 1st Plaintiff deponed in a supporting affidavit filed on the 5/3/18 that the 1st Defendant and her sons on 28/2/18 started digging the foundation for construction of a house on the land in total disobedience of the Court order. That she reported to the Muthithi Police station who intervened but as soon as the police left the scene the construction continued.

9. On the 20/3/18 the parties through their learned counsels on record elected to prosecute the application through written submissions which I have read and considered.

10. Contempt of Court is defined under section 4 of the contempt of Court Act No. 46 of 2016 as follows:-

“(1) Contempt of Court includes — (a) civil contempt which means willful disobedience of any judgment, decree, direction, Order, or other process of a Court or willful breach of an undertaking given to a Court; (b) criminal contempt which means the publication, whether by words, spoken or written, by signs, visible representation, or otherwise, of any matters or the doing of any other act which — (i) scandalizes or tends to scandalize, or lowers or tends to lower the judicial authority or dignity of the Court; (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct the administration of justice.

(2) In any case not relating to civil or criminal proceedings as contemplated under subsection (1), an act that is willfully committed to interfere, obstruct or interrupt the due process of the administration of justice in relation to any Court, or to lower the authority of a Court, or to scandalize a judge, judicial officer in relation to any proceedings before the Court, on any other manner constitutes contempt of Court.”

Section 5(b) of the aforesaid Act gives this Court the power to punish for contempt of Court.

11. Black's Law Dictionary, 10th Edition at page 385 defines contempt as follows;

“Contempt is a disregard of, disobedience to, the rules, or Orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behaviour or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body.”

12. In order to succeed in civil contempt proceedings, the Applicant is duty bound to prove the following 4 elements; -

- a. the terms of the Order (or injunction or undertaking) were clear and unambiguous and were binding on the Defendant;
- b. the Defendant had knowledge of or proper notice of the terms of the Order;
- c. the Defendant has acted in breach of the terms of the Order; and
- d. the Defendant's conduct was deliberate.

13. Having considered the application, the rival affidavits and the submissions the issues for determination are;

- a. Whether the orders have lapsed?

- b. Whether the 1st Defendant has acted in breach of the said orders
- c. What orders should the Court grant
- d. Who meets the cost of the application?

14. The order that is complained of is the first limb which is regurgitated here for clarity as;

- a. “That a temporary injunction is hereby issued directed against the 1st Defendant, her agents, servants and anybody claiming or working under her from in any way committing any acts of waste interference with the Plaintiffs’ peaceable occupation and utilization of parcels No. s Loc 6/Muthihi/1433, 1723 and 1722 now reconstituted into parcel No Loc 6/Muthithi/1041 pending the hearing and determination of this suit”.

15. The order enjoined the 1st Defendant against committing acts of wastage and interfering with the peaceful occupation and utilization of the suit lands. The 1st Defendant has opposed the application on four fronts; firstly, that the application is brought to cause a delay of the hearing of the case. No evidence was tabled by the 1st Defendant to support this. The Court took cognizance that the suit is part heard having commenced in Nyeri ELC Court. Secondly the 1st Defendant has stated that the application is incompetent as it seeks to enforce an order for contempt more than six months from the date of issuance of the order. That the application offends section 34 of the Contempt of Court Act. Section 34 of the Contempt of Court Act states as follows;

“No Court shall initiate any proceedings for contempt of Court either on its own motion or otherwise after the expiry of a period of six months from the date on which the contempt of Court is alleged to have been committed.

The relevant section of the Act is clear. The limitation is 6 months from the date of the alleged contempt and not the issuance of the Court order. The Court order was issued on 29/7/11.

16. The third ground of opposition by the 1st respondent is that the interlocutory orders issued on the 29/7/11 lapsed after 12 months in accordance to Order 40 rule 6. Order 40 rule 6 of the Civil Procedure Rules provides as follows;

“Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the Court orders otherwise (emphasis is mine).

17. In the case of **Erick Kimingichi Wapang’ana & another Vs Equity Bank Limited & another [2015] eKLR** the Court of Appeal held that;

“Order 40 was made in clear cognizance of the preceding Rules in that order. It therefore follows that notwithstanding the wording of any order of interlocutory injunction, the same lapses if the suit in which it was made is not determined within twelve months “unless,” as the Rule further provides, “for any sufficient reason the Court orders otherwise.”

In this case there was no subsequent order extending the injunction. Having been issued on 11/10/11, the injunction order therefore lapsed on 12/10/12. Similarly, I agree with the Respondents counsel that the orders having been granted on the 29/7/11 lapsed on 29/7/12. The same were not extended and neither the suit has been determined within one year. It therefore follows that there are no orders in force capable of sustaining contempt of Court.

18. The Court holds that the impugned injunction orders lapsed so much so that they cannot sustain contempt of Court proceedings. I find no reason to address the other issues raised in the application as such would amount to an academic exercise in view of the finding above.

19. The upshot the application is unmerited is dismissed accordingly.

20. The Applicant shall pay the costs of the application.

DELIVERED, DATED AND SIGNED AT MURANG’A THIS 27TH DAY OF SEPTEMBER 2018.

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

1st, 2nd & 3rd Plaintiffs/Applicants – Present

T M Njoroge for the 1st Respondent/Defendant

2nd Respondent/Defendant – Present

3rd Respondent/Defendant - Absent

Irene and Njeri, Court Assistant