



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 66 OF 2012

NAFTALLY MURIITHI NJUKI.....PLAINTIFF

VERSUS

1. ABDIRAHMAN ABDILAH

2. BEATRIACE MULI

3. ROBERT MONG'ARE

4. ABDALLAH SAASI

5. MUTUA NZIOKA

6. THE DISTRICT LAND REGISTRAR, LAMU

7. HON. ATTORNEY GENERAL.....DEFENDANTS

RULING

1. Naftali Muriithi Njuki filed this suit against the seven Defendants herein on 7th May 2012. Filed together with the Plaintiff was a Notice of Motion application also dated 7th May 2012 seeking a temporary injunction to issue as well as an order of inhibition in regard to all that parcel of land known as Lamu/Hindi Magogoni/361(the suit property).

2. Having heard arguments by all parties in regard to the said application, the Honourable Lady Justice Meoli proceeded on 23rd October 2012 to grant Orders as follows:-

1. That an order of temporary injunction be and is hereby granted restraining the 1st Defendant by himself, their agents, assigns and/or employees or anyone claiming in or through him or otherwise howsoever from selling or purporting to sell or offering to sell, disposing off, charging, mortgaging, subdividing, pledging, entering into, remaining in or in any other manner interfering with the Plaintiff's ownership and quiet possession and enjoyment of the said property known(as) Title Number Lamu/Hindi/Magogoni/361 together with the buildings and/or improvements, trees, vegetation and/or crops thereon pending the hearing and determination of this suit.

2. That an Order of inhibition be and is hereby issued against the Defendants inhibiting the registration of any dealings with the suit land/property known(as) Title Number Lamu/Hindi Magogoni/361 pending the hearing and determination of this suit.

3. Prior to the determination of the application the Learned Judge had on 22nd May 2012 granted an order for the maintenance of the status quo pending the determination of the application. Those orders were extended on 23rd June 2012.

4. A couple of years after the orders were issued and more particularly by this application before me dated 4th July 2017, the Plaintiff now prays for orders to issue as follows:-

2. That the 1st Defendant/contemnor herein be committed to jail for a period of six months for being in contempt of the orders of this Honourable Court made on the 22nd May 2012 and 23rd June 2012(and) further all the properties of the 1st

Defendant/contemnor herein be attached for disobeying (sic) the Order of this Honourable Court (issued) on the 22nd May 2012 and 23rd June 2012.

3. That an order of mandatory injunction be granted compelling the 1st Defendant/Contemnor by himself or anyone claiming in or through him to forthwith demolish the structure and fence erected on the suit property failing which the Plaintiff be authorized to pull down the said structures and fence at the 1st Defendant/Contemnor's expense and in the latter eventuality, the said exercise be carried out with the assistance and in the presence of the Officer Commanding Hindi Magogoni Police Station/Post.

4. That the costs of this Application be awarded to the Applicants in any event.

5. The Application is supported by the Plaintiff's affidavit and is based, inter alia, on the following grounds:-

a) That this Court issued orders of maintenance of the status quo in regard to the suit property on 22nd May 2012 and subsequently the Court granted a temporary injunction against the 1st Defendant after hearing all parties;

b) That as a party to these proceedings, the 1st Defendant has all along been aware of the said orders;

c) That on or about 22nd April 2017, the 1st Defendant visited the suit property in the company of other people and started erecting a fence around the same;

d) That prior to the date when they erected the fence, the 1st Defendant had constructed a temporary shelter for one of his workers who has been living in and cultivating the suitland; and

e) That the said acts of the 1st Defendant are in flagrant abuse and disregard of the orders of the Court and it is prudent for this Court to take appropriate steps to punish the 1st Defendant accordingly.

6. In a Replying Affidavit filed herein on 31st July 2017, Abdirahmna Abdillahi (the 1st Defendant) avers that while it is true the Court granted the orders of status quo on 22nd May 2012, he had taken possession of the land in 2009 after purchasing the same. He further avers that by the time the Plaintiff commenced these proceedings the Plaintiff had moved elsewhere where he had constructed his new home.

7. The 1st Defendant further states that he has been regularly patrolling the land and in the course of such patrol, he noticed some encroachment on the suit premises in December 2015. This prompted him to put up a temporary house for an employee to prevent squatters from settling on the land. Before doing this the 1st Defendant states that he called the Plaintiff's wife and informed her of the basis of his action.

8. The 1st Defendant further avers that he put up a fence around the suit property in April 2017 after noting that some unknown people were engaged in sub-division of the land and were uprooting the boundary beacons. It is accordingly the 1st Defendant's case that he has not disobeyed the Court orders but has acted to preserve the suit premises.

9. I have considered the application and the response thereto. I have equally considered the submissions filed herein by the Learned Advocates for the parties.

10. As was stated by the Court of Appeal in *Shimmers Plaza Limited –vs- National Bank of Kenya Ltd (2015) eKLR*:-

“It is the plain and unqualified obligations of every person against or in respect of whom an order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.”

11. In his response to the application before me, the 1st Respondent denies that he is in disobedience of the orders granted by Meoli J on 22nd May 2012 and confirmed by the Learned Judge after inter-partes hearing on 23rd October 2012. Explaining his actions after the Court granted the orders, the 1st Respondent/Defendant avers that he has been regularly patrolling the suit land with a view to stopping any encroachment thereupon by third parties.

12. In the course of such patrol, he noticed some interference with the land. This prompted him sometime around December 2015 to put up a temporary house for one of his employees on the suit property. The duty of that employee is to prevent would-be squatters from settling on the suitland. In addition, the 1st Defendant admits that sometime in April 2017, he proceeded to construct a perimeter fence around the suit property after he noticed that some unknown people were engaged in sub-dividing the land and uprooting beacons therefrom. In doing so, the 1st Defendant believes he was merely preserving the suit property.

13. Unfortunately for the 1st Defendant/Respondent, the order of Meoli J as seen above at paragraph 2 hereof clearly restrained him by himself or his agents from inter alia, entering into, remaining in or in any other manner interfering with the Plaintiff's enjoyment of the suit property. Those orders clearly meant that the 1st Defendant was to keep his hands off the suit property until such a time that the suit was determined. After the issuance of the injunction, it was no longer his duty to preserve the suit property as the running thereof had been squarely left in the hands of the Plaintiff until such a time that the suit was heard and determined.

14. As the Honourable Justice G. V. Odunga observed in *Republic –vs- Kenya School of Law & 2 Others Ex-parte Juliet Wanjiru Njoroge & 5 Others(2015) eKLR* :-

“.....Court orders are not made in vain and are meant to be complied with. If for any reason a party has difficulty in complying with Court orders the honourable thing to do is to come back to Court and explain the difficulties faced by the need to comply with the Order. Once a Court order is made in a suit, the same is valid unless set aside on review or an appeal.”

15. As it were, Courts will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. On the material placed before me, I am persuaded and I do find that the 1st Defendant/Respondent is in contempt of the orders of this Court as issued on 22nd May 2012 and confirmed on 23rd October 2012.

16. In the premises, I allow Prayers 2 and 3 of the Notice of Motion dated 4th July 2017 with costs to the Plaintiff/Applicant but reserve sentence until the contemnor is heard on mitigation.

17. In the circumstances a Warrant of Arrest is hereby issued to the OCS Hindi Magogoni Police Station to apprehend the 1st Defendant and to bring him forthwith to this Court for mitigation and appropriate sentence.

Dated, signed and delivered at Malindi this 31st day of October, 2018.

J.O. OLOLA

JUDGE