



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MURANG'A

E.L.C NO. 321 OF 2017

PETER MUTURI WAKABA.....PLAINTIFF

VS

JOSEPH MWIRIGI WAKABA.....1ST DEFENDANT

LUKA MWANGI MAINA.....2ND DEFENDANT

DAVID IRUNGU MACHARIA.....3RD DEFENDANT

LYDIAH WAITHERERO NJIGU.....4TH DEFENDANT

THE HON. ATTORNEY GENERAL.....5TH DEFENDANT

RULING

1. This Ruling relates an application filed by the Plaintiff by way of Notice of Motion dated 11/5/18. In the application the Plaintiff seeks to have the 3rd Defendant punished for contempt of an order made by the Court on 18/4/18. The application was duly served on the 3rd Defendant. The 3rd Defendant however did not file any response to the application. On the main the Plaintiff alleges that the 3rd Defendant in blatant disregard of the order made by the Court on 18/4/18 (pursuant to consent of the parties) transferred the suit land LOC.2/KANGARI/T.77 (Suit land) to a 3rd party namely, Gichuhi Francis Karanja. A copy of the said order is on record and restrains the 3rd Defendant from selling, encumbering or otherwise adversely dealing with the suit land.

2. The transfer was done on 24/4/18. On this date the Court order of 18/4/18 had not been varied, set aside or stayed. Much as the 3rd Defendant did not file any response to this application. There is nothing much in contestation that may arise on the following facts now on record;

- a) The 3rd and 5th Defendants are represented in this case in which the order complained was recorded by consent of the parties.
- b) The 3rd Defendant transferred the suit land to the said Gichuhi Francis Karanja on 24/4/18 while the said Court order was in force.
- c) The Land Registrar who is sued in this case through the 5th Respondent was by necessary nexus aware of the order complained by the Plaintiff as at 24/4/18 when he registered a transfer of the suit land to the said Gichuhi Francis Karanja.

3. The necessary factors to consider in a matter relating to contempt of Court are;

- a) Whether there was an order made by the Court which was clear and unambiguous.
- b) Whether the party alleged to be in contempt of Court was aware of the Court order.
- c) Whether the party alleged to have acted in contempt indeed acted in a manner contra to the order issued by the Court.

4. In the 10th Edition of Black's Laws Dictionary contempt of Court is defined 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.”

5. The reason why provision is made for contempt of Court is:

“(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”.

6. In the instant case it is indeed clear that the 3rd and/or 5th Defendants jointly and severally were at the material time aware of both the circumstances and the undisturbed posture of the order made by the Court on 18/4/18. So much so that the 3rd Defendant’s application for registration of the suit land and the 5th Defendants action thereon on 24/4/18 was such conduct as it defies the authority and dignity of the Court in respect of the order made on 18/4/18. If such conduct were left to stand or continue it clearly interferes with the administration of justice. It is in such matters that the Court ought to assert its authority not to protect the personal dignity of the judiciary or the private rights of the parties or litigants but to protect the administration of justice. It is noteworthy that in proceedings of contempt of Court, it is not the dignity of the Court which is offended; it is the fundamental supremacy of the law which is challenged by the impugned conduct of the party alleged to have acted in defiance to the Court order.

7. In the case of **Teachers Service Commission vs Kenya National Union Teachers & 2 Others** 2013 eKLR Justice Ndolo held as follows;

“The reason why Courts will punish for contempt of Court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the Court or even the personal ego of the presiding Judge. Neither is it about placating the Applicant who moves the Court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a Court order in his hands must be assured that the order will be obeyed by those to whom it is directed.

A Court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the Court, the avenues for challenging it are also set out in the law. Defiance is not an option”.

8. It is a principle of Public policy that orders must be obeyed however unpalatable the orders may be. If so the party has avenues to revert to Court and seek variations of the same. The 3rd and 5th Defendant did not take the permissible option if they were dissatisfied with the order made by the Court on 18/4/18. The permissible cause of action would have been to apply the Court by way of an appeal on revision stay or set aside the said order.

9. The Plaintiff has not sought any order against the 5th Defendant. Much as that has not been done, it does not extricate the 5th Defendant from the impropriety of the conduct of the Land Registrar on 24/4/18. The Court will pronounce itself on the issue in the final orders in this ruling.

10. With respect to the 3rd Defendant the Court finds that the 3rd Defendant knowingly and willfully disobeyed the orders made by the Court on 18/4/18 and hereby cite the 3rd Defendant for contempt of Court.

11. The Court has found above that;

a) The 3rd and 5th Defendants are parties to this case and participated in recording of the order by consent complained of on the 18/4/18.

b) The 3rd & 5th Defendants were aware on 24/4/18 that there ought not to be any dealings, interalia, by way of transfer of the suit

land to any person at all.

c) The 3rd Defendant presented and or caused to be presented to the 5th Defendant documents of transfer of the suit land and the 5th Defendant acted thereon by way of registration and issuance of a title deed in respect of the suit land to a 3rd party in defiance of the order made by the Court on 18/4/18.

12. Article 232 of the Constitution sets out the principles of public service and binds the Land Registrar who is sued and represented by the Attorney General in the proceedings. Article 232 of the Constitution as read together with section 19 of Environment and Land Act Part II of Public Service (values & principles) Act is specific section 5 require the Court and the Land Registrar who is sued and represented in this case under the name of the Attorney General in their functions to maintain

“(a) high standards of professional ethics;

(b) efficient, effective and economic use of resources;

(f) transparency and provision to the public of timely, accurate information;

(g) subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions;

(h) representation of Kenya’s diverse communities”.

13. In the Courts finding the actions by the Land Registrar aforesaid of transferring the suit land to a third party contrary to an order of the Court was against the set Principles of Public service, illegal and unauthorized. It cannot therefore be said that such action was or is capable of conferring a benefit or title to a 3rd party in obedience of the law.

14. Article 159 of the Constitution as read together with Section 3A of Civil Procedure Act requires the Court to at all times be guided by the Principle of substantial justice in administration of justice.

15. Pursuant to the provisions of the contempt of Court Act as read together with Section 29 of Environment and Land Court Act, this Court is empowered to punish for contempt in the following manner;

“Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both”.

16. In the circumstances the Court makes the following orders;

a) The 3rd Defendant is cited for contempt of Court and hereby directed to personally appear in Court for mitigation and sentencing.

b) The title deed issued to Francis Gichuhi Karanja in respect of the suit land on 24/4/18 be and is hereby cancelled and the title reverts to the 3rd Defendant.

c) The Land Registrar, Murang’a be and is hereby ordered to delete from the Register of the suit land all the entries relating to the transfer and issuance of title deed to Francis Gichuhi Karanja.

d) The costs of this application are payable by the 3rd Defendant.

DELIVERED, DATED AND SIGNED AT MURANG’A THIS 31ST DAY OF OCTOBER 2018

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Kariuki for the Plaintiff/Applicant

Defendants/Respondents – Mbugua HB for Muturi Njoroge for the 1, 2 & 3 Defendants/Respondents

4 - Absent

5 - Absent

Irene and Njeri, Court Assistants