



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. APPEAL NO. 4 OF 2014

PRISCA MUKETHE MUIU.....APPELLANT

VERSUS

CHARLES MUIU.....1ST RESPONDENT

SAMMY MUIU.....2ND RESPONDENT

RAPHAEL MUIU.....3RD RESPONDENT

RULING

1. In the Application dated 15th August, 2016, the Appellant is seeking for the following orders:

a. That the Respondents- Sammy Muiu and Raphael Muiu should show cause why they cannot be punished by the court for disobeying the court order made on 22nd October, 2014 by being put into jail for a period of six (6) months.

b. That the Respondent do pay for the costs of this Application.

2. The Application is premised on the ground that the Respondents were ordered by the court not to evict the Appellant from the suit premises on 22nd October, 2014; that the order was made in the presence of the Respondents and that in July and August, 2016, the Respondents began building houses on the suit land.

3. In his Affidavit, the Appellant deponed that despite the order of the court staying the decision of the lower court, the Respondents have been harassing him and also burned the grass on the suit land.

4. In reply, the 3rd Respondent deponed that it is not true that they are carrying out acts of wastage on the suit land; that they have taken care of the suit land for over forty (40) years and that they have been utilizing the suit land all along.

5. The 3rd Defendant further stated that he is not aware of the order of 22nd October, 2014; that his home is on parcel number 174 Kithimani "A" and that he is not in contempt of the order of the court.

6. In his submissions, the Appellant's advocate submitted that the Respondent has not denied the acts complained of and that he should be punished for his contemptuous actions. The Respondent's advocate did not file submissions.

7. It is not in dispute that on 20th February, 2017, this court issued an order of injunction restraining the Respondents or their agents from destroying, selling, alienating, damaging or constructing any building on parcels of land known as Kithimani "A" Plot Nos. 173, 174 and 175 pending the hearing of the Appeal.

8. The record shows that when the order was given, neither the Respondents nor their advocates were in court. Consequently, the said order was to be extracted and served either on the Respondents or their Advocate.

9. Prior to the order of 20th February, 2017 this court had delivered a Ruling dated 22nd October, 2014 staying the decision of the lower court. The Ruling of the court shows that the Respondents or their advocate were not in court when the same was delivered.

10. The Appellant has not annexed any evidence to show that she notified the Respondents of the said Ruling and order of the court. Indeed, no Affidavit of Service was tendered in this court to prove service of the order of 22nd October, 2014 on the Respondents.

11. In the absence of evidence to show that the Respondents were served with the order of 22nd October, 2014, or were aware of the said order, I find that the issue of contempt cannot arise. Indeed, it is trite that the court cannot commit the alleged contemnors to civil jail unless and until there is evidence to show that the contemnors were aware of the impugned order.

12. For those reasons, I dismiss the Application dated 15th August, 2017 with costs

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 26TH DAY OF OCTOBER, 2018.

O.A. ANGOTE

JUDGE