

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO. 101 OF 2017

ANASTANCIA KAVISA JOSEPH NGUNGU.....PLAINTIFF

-VERSUS-

ABDALLA SALIM SAID

NASSIR MUSA MOHAMED.....DEFENDANTS

RULING

1. On 22nd March 2017 the plaintiff moved the Court vide her application asking the Court to issue temporary orders of injunction to restrain the defendants from entering and or constructing on parcel of land No Block B on plot No 220/1/M.N known as house No 056 in Mtopanga, Mombasa pending hearing and determination of suit. In support of the motion inter alia were photographs annexed as '**AKJN 4**'. The photos showed houses that have fully built with a roof and some sort of grills fixed on the windows. The orders were granted on 6th December 2017.

2. The plaintiff has presently moved the Court in her notice of motion dated 2nd February 2018 praying for the committal of the defendants to prison for being in contempt of Court. The plaintiff has pleaded that the order was served upon the two defendants but they are hell bent to disobey the Court orders without second thoughts. She has annexed photographs marked as '**AKJN 3**' to show that the defendants have continued with construction thus causing her distress and anxiety.

3. Before a party is punished for contempt, proof of the contemptuous acts must be made by the party alleging and the standard of proof is required to be above the balance of probabilities. This application was not opposed however this does not exempt the plaintiff from discharging the burden of proving that there was indeed contempt of the Court orders.

4. In the pictures annexed as '**AKJN 3**' to the affidavit in support of the contempt application, the houses also appear complete with roofs and grills on the windows. The plaintiff has not identified to this Court the difference between the photos annexed to the affidavit in support of the application for the injunctive orders and the present photos. On the face of the two sets of photographs, the grills on the windows, walls and roof appear similar.

5. The plaintiff did not plead that after the order was served, new buildings were constructed and or that the defendants continued with the construction works. Secondly no evidence has been placed before the Court to show that the defendants entered the suit premises after the order was served nor plead the nature of interference being complained of. The orders obtained by the plaintiff were temporary and for purposes of restraining the defendants from constructing and or entering the suit premises.

6. The orders as sought and granted on 6.12.2017 did not provide for the demolition of the existing structures before the order of temporary injunction issued. The applicant having not explained the nature of the contempt this Court finds the same is not proved and therefore cannot order for the punishment of the defendants. On the same note, an order for demolition of the structures to purge the contempt which is not proved as prayed does not lie. In effect, I find the application dated 2.2.2018 as scandalous and without merit. The same is ordered dismissed with no order as to costs as it was not defended.

Dated, signed & delivered at Mombasa this 12th October 2018

A. OMOLLO

JUDGE