



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC NO. 107 OF 2003

RULING

MARGARET NKIROTE..... PLAINTIFF

SARAH KARWITHA ELIJAH.....APPLICANT

VERSUS

WILSON M'RINGERA.....1ST DEFENDANT/RESPONDENT

JONATHAN MARETE.....2ND DEFENDANT/RESPONDENT

JOHN MUBICHI..... 3RD DEFENDANT/RESPONDENT

MARTIN POWEL.....4TH DEFENDANT/RESPONDENT

RULING

1. This ruling is in respect of the application dated 20.4.2018 where applicant/plaintiff is seeking for the following orders:

(i) Spent

(ii) The honourable court be pleased to cite the 4th respondent for contempt of court for disobeying the decree and order of this court to transfer L.R No Nyaki/Kithoka/3019.

(iii) The honourable court be pleased to cancel the sub-division of L.R No. Nyaki/Kithoka/3019 now sub-divided into Nyaki/Kithoka/4946 and 4947 and reconstitute it into its original number and ownership.

(iv) That the honourable court be pleased to cancel the names of Martin Mburugu Bikuri from L.R No. Nyaki/Kithoka/4946

(v) Costs to be provided for.

2. The grounds in support of the application are that:

(i) That the honourable court in its judgment granted applicant L.R No. Nyaki/Kithoka/3019 measuring 0.69 acres.

(ii) The 4th respondent refused to sign the transfer documents but on 14.4.2016 the court ordered the 4th respondent to sign the requisite transfers and in default the court executive officer to sign the same.

(iii) That on 8.4.2016, the 4th respondent sub-divided the suit land and transferred 0.18 acres to one Martin Mburugu Bikuri in open defiance of the court order.

(iv) That indeed the 4th respondent is in breach of an express court order which can be remedied only by allowing this application.

3. In her supporting affidavit, the 1st plaintiff avers that the 4th respondent has continuously defied the court order to transfer 0.69 acres of land reg. No. Nyaki/Kithoka/3019.

4. When the application came up for hearing on 14.5.2018, counsel for respondent urged the court to be granted 14 days to respond to the application which he was opposing. The court did not just grant him his wish, he was given 30 days. Thereafter, parties were to file written submissions in respect of the application.

5. The respondent did not file any response to the application, nor the submissions. There was even no appearance for respondent on 27.9.2018, the date the court had given on 14.5.2018.

6. In the submissions of the plaintiff, a brief account of the dispute has been given as follows; that by a judgment dated 17th May 2006, Justice Sitati ordered that the defendants herein hold in trust L.R No. Nyaki/Kithoka/1755, 1756, 1757, 1758 and 1759. She further found that the plaintiff is entitled to 0.69 acres out of L.R No. Nyaki/Kithoka/1759. The plaintiff was awarded costs of the suit. Before the land could be transferred to the plaintiff she died and was replaced by her next of kin Sarah Karwitha Elijah. When the applicant realized that the 4th defendant who is the registered proprietor of L.R No. Nyaki/Kithoka/1759 was unwilling to execute transfer documents, she applied for the court to allow the court executive officer to do so, which application was allowed. However when the applicant applied for the search certificate to supply to the executive officer, she discovered that the 4th respondent had subdivided the land into two portions and transferred it to one Martin Mburugu Bikuri. The 4th respondent did all this with full knowledge of the court orders. Applicant submits that 4th defendant's actions amount to impunity and contempt of the court, and in order to maintain the dignity and authority of this court, it is only fair and just for the court to grant the orders sought in the application dated 20th April, 2018.

7. If indeed the land parcel No. Nyaki/Kithoka/3019 has been sub-divided into Nyaki/Kithoka/4946 and 4947, then such a process must have been undertaken to defeat the cause of justice and to ensure that the 0.69 acres portion of land was out of reach of the plaintiff. The annexure, SK I and SK 2 are certificates of official searches confirming the existence of those parcels No. 4947 and 4946.

8. **Section 4 of the contempt of court Act no. 46 of 2016** provides as follows:

“Contempt of court includes; (a) Civil contempt which means willful disobedience of any judgment decree, discretion, order or other process of a court or willful breach of an undertaking given to a court.

Section 3 thereof provides that;

“The objective of this Act is to –

- (a) Uphold the dignity and authority of the court**
- (b) Ensure compliance with directions of the court**
- (c) Ensure the observance and respect of the due process of the law**
- (d) Preserve an effective and impartial system of justice and**
- (e) Maintain public confidence in the administration of justice as administered by the court.**

9. Section 29 of the Environment and Land Court Act provides that;

“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 one million shillings or to imprisonment for a term not exceeding two years or both.”

10. In **ELC Case no. 463 of 2017 Muranga, Kenneth Gathira Kimani vs Grace Njeri Macharia, Kemei J** made reference to the case of the **Teachers Service Commission V Kenya National Union of Teachers & 2 others (2013) EKLR Justice Ndolo** , where it was stated 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 (emphasize is mine). 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”.

11. It is not lost to this court that though judgment was delivered way back on 17.5.2006, where plaintiff was to get 0.69 acres from land no. 1759, this judgment has never been implemented. 12 years have gone by and still counting! Meanwhile, the parcel of land, the subject matter of the court kept on being subdivided. Initially it was divided into two parcels numbers 2307 and 2308. Parcel No. 2307 was allegedly sold. Parcel No. 2308 was then subdivided into parcel no. 3018, 3019 and 3020. Apparently, plaintiff was to get the portion of 3019 which was

0.7 acres. Plaintiff passed on before the transfer could be effected. It is now her legal representative who is pursuing the issue.

12. Respondent has not even bothered to rebut the averments that he has sub-divided land parcel no. 3019 into parcel no's 4946 and 4947 whereby land no. 4946 is now apparently in the name of a stranger, Martin Mburugu Bikuri. This just shows how contemptuous the respondent is regarding courts orders. How can the rule of law be maintained if this practice was to be allowed to thrive with abandon? I am inclined to find that the 4th respondent is in contempt of court's orders and he ought to be punished accordingly. I find that the application dated 20.4.2018 is merited and I proceed to give the following orders;

13. Final orders:

- 1) An order is hereby issued cancelling the subdivision of Land Registration No. Nyaki/Kithoka/3019 now subdivided into Nyaki/Kithoka/4946 and 4947 and an order is issued for the two parcels to be reinstated back to the original number 3019 and ownership.
- 2) An order is hereby issued cancelling the name of Martin Mburugu Bikuri from being the proprietor of land No. Nyaki/Kithoka/4946.
- 3) Martin Powel, the 4th respondent is hereby found guilty of contempt of court's orders issued on 14.4.2016.
- 4) An order is hereby issued for MARTIN POWEL to appear before this court for mitigation and sentencing on a date to be fixed by the court.
- 5) 4th respondent is condemned to pay costs of this application.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 8TH NOVEMBER, 2018 IN THE PRESENCE OF:-

C/A: Janet

Ashaba H/B for Kimathi K. for plaintiff

Mutegi for defendant

HON. LUCY. N. MBUGUA

ELC JUDGE