



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

E.L.C CASE NO. 686 OF 2014

MICHAEL MACHARIA NJARARA.....PLAINTIFF /RESPONDENT

-VERSUS-

JEREMIAH MUTHOMI.....1ST DEFENDANT/APPLICANT

JOSEPH NTWIGA MWENDE.....2ND DEFENDANT/APPLICANT

RULING

1. The notice of motion dated **28th July, 2016** by the defendants/applicants seeks leave to commence contempt proceedings against the plaintiff/respondent; immediate cancellation of any titles issued after 5th December, 2014 with regard to **L.R Number 9831/14** (hereafter referred to as the suit property); demolition of the fences on the suit property; the OCS Toro Police Station to supervise the demolition of the fences and provide security and costs of the application.
2. This application is premised on the grounds that a court order was issued by **Ngaah J** on 5th December, 2014 restraining the respondent from subdividing the suit property but the respondent in disobedience of the court order has gone ahead to subdivide the suit property.
3. The application is supported by the affidavit sworn **28th July, 2016**. **Jeremiah Muthomi** depones that he is one of the founder directors of Buuri Investments Ltd, the registered owner of the suit property; that members of the company including the respondent engaged the services of the 2nd defendant/applicant, a land surveyor, to carry out the subdivision of the suit property according to each members contribution which the 2nd respondent completed. However the respondent on 5th December, 2014 moved to court and obtained orders prohibiting dealings on the suit property which orders the respondent has now disobeyed. He prays that the respondent be cited for contempt of court and that status quo obtaining before 5th December, 2014 be maintained.
4. The application is opposed vide grounds of objection filed by the respondent dated **7th November, 2016**; that application is a non-starter in law, incurably defective and omnibus; that no orders were issued/or have been issued in favour of the applicant; that no other titles exist other than the original title and that the land belongs to the respondent.
5. The application was heard on 2nd December, 2016 with **Mr Gori** appearing for the applicants and **Mr Karweru** for the respondent.
6. Mr Gori submitted that despite an order for maintenance of status quo having been issued, the plaintiff had entered the suit property and started fencing the same clearly contravening the orders of **Ngaah J**.
7. In response, Mr Karweru submitted that the orders existing were obtained by the respondent to expressly restrain the applicants from carrying out the subdivision; that the applicants are merely replicating the orders granted to the plaintiff, which have already been registered against the title. According to him, this application is designed to waste the court's time and delay the hearing of the matter.
8. In a rejoinder, Mr Gori stated that there is nothing frivolous about this application and the plaintiff cannot purport to evict the defendants from the land when there are valid court orders in existence.

Analysis and determination

9. I have considered the motion, the affidavits in support and the grounds of opposition. I have also considered the oral submissions by counsels. I find the issue for determination to be whether the applicant has made up a case warranting the issuance of the orders sought.

10. The order issued by my brother **Ngaah J** on 5th December, 2014 was as follows:

“THAT an order of injunction do issue, directed to the defendants herein, their agents, servants, assigns barring alienation, subdivision, registration of any deeds, plans or in any way dealing with parcel No. L.R. No. 9831/14 to create any new titles until the hearing and determination of the application in the 1st instant and the whole suit, in time” (emphasis mine)

11. The aforesaid order was issued against the defendants/applicants not to carry out any of the activities stated therein. It was not directed at the respondent/ plaintiff. The order did not restrain the plaintiff/respondent from entering the suit property or from erecting fences therein. If indeed the respondent has gone ahead to carry out his own subdivision and obtain title deeds which will change the substratum of this suit while the matter is still pending in court, then the applicants are at liberty to file the appropriate motion and adduce evidence to this effect.

12. As it stands now, I find this application to be one that warrants striking out under **Order 2 Rule 15 (a), (b) and (c)** of the Civil Procedure Rules and as held in **Transcend Media Group Ltd v Independent Electoral and Boundaries Commission** [2015]eKLR and **Mpaka Road Development Co. Ltd v Abdul Gafur Kana T/A Anil Kapuri Pan Coffee House** [2001] eKLR.

13. For the above reasons, I find the instant motion to be without merit and I consequently dismiss the same with costs to the respondent.

Dated, signed and delivered at Nyeri this 28th day of February, 2017.

L N WAITHAKA

JUDGE

In the presence of:

Mr. Karweru for the plaintiff/respondent

Ms Maina h/b for Mr. Gori for the applicant/defendant

Court clerk - Esther