



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 154 OF 2009

NAAMAN K. MEME.....PLAINTIFF

VERSUS

STEPHEN MAINGI MURIITHI.....1ST DEFENDANT

BENSON RITHO MURIITHI(sued as the administrator

of the estate of Joseph Maingi Muriithi).....2ND DEFENDANT

PRINCIPAL REGISTRAR OF TITLES.....3RD DEFENDANT

GATHURA INVESTMENTS LIMITED4TH DEFENDANT

ZACHARIA NDUNGU.....5TH DEFENDANT

GILBERT KAIRU.....6TH DEFENDANT

NAIROBI CITY COUNTY GOVERNMENT.....7TH DEFENDANT

RULING

What is before me is the plaintiff's application by way of Notice of Motion dated 9th June 2014 seeking the following orders:

1. That leave be granted the plaintiff to join the 4th to 7th defendants in the suit herein.
2. That the plaintiff be granted leave to amend its plaint in terms of the draft amended plaint annexed to the application.
3. That a temporary injunction be issued restraining the 4th to 7th defendants whether individually or jointly, through their servants and/or agents or any of them from entering into the plaintiff's property known as LR No. 27903 and dealing with the said property in any manner whatsoever pending the hearing of the application herein.
4. That a directive be issued suspending, revoking or quashing the approvals by the 7th defendant pending the hearing of the suit herein.
5. That the plaintiff be granted leave to institute contempt proceedings against the 2nd defendant

herein, Benson Riitho Muriithi

6. That the 2nd defendant does show cause why he should not be committed to imprisonment for being in contempt of the court orders issued herein on 8th April 2009 and confirmed on the 3rd November 2011.
7. That the OCS/OCPD Embakasibe ordered to ensure compliance with the orders herein.
8. That the costs be in the cause.

The application which is supported by the plaintiff's affidavit sworn on 9th June 2014 was brought on grounds that the court granted injunctive orders restraining the 1st to 3rd defendants from interfering with his quiet and peaceful possession of all that parcel of land known as LR No. 27903 (hereinafter "the suit property"). The plaintiff has averred that the 2nd defendant proceeded to sell and transfer properties adjacent to the suit property to the 4th, 5th and 6th defendants. The plaintiff has averred that the 7th defendant acting under the instruction of the 2nd defendant approved a subdivision scheme in which the suit property was indicated as an access road for the 4th, 5th, and 6th defendants who forcefully and unlawfully demolished the plaintiff's buildings in order to create the said road. The plaintiff has contended that if not stopped, the 4th to 6th defendants will completely demolish the buildings remaining on the suit property thereby rendering this suit nugatory. The plaintiff has contended that he has suffered loss as a result of the 4th to 6th defendants' actions and will continue to suffer irreparably if the orders herein are not granted.

The plaintiff has averred that he advised the 4th to 7th defendants about the pendency of this suit but the said defendants contended that they were not parties to the suit and would not abide by the court order issued herein which was only directed at the 2nd defendant. The plaintiff averred that it then proceeded to file an application against the 4th to 7th defendants in ELC No. 714 of 2014 where the court directed that the issues raised therein be determined in this suit.

The plaintiff has averred that the demolition complained of was a ploy by the 2nd defendant to evict him from the suit property. He has stated that the aforesaid acts by the 4th to 6th defendants could have been stopped by the 2nd defendant in obedience to the court order referred to above. The plaintiff has averred that the 4th to 6th defendants acted on the advice of the 2nd defendant who could have instructed the 7th defendant on the subdivisions and approvals referred to above.

The plaintiff's application was opposed by the respondents. The 2nd defendant filed grounds of opposition dated 26th November 2014 and replying affidavits sworn on 8th September 2014 and 26th November 2014. In his grounds of opposition, the 2nd defendant stated that the application did not satisfy the criteria laid down in **Giella vs. Cassman Brown & Co. Ltd (1973) E. A 358**. He stated that the sale agreement dated 28th August 2004 between the plaintiff and the 1st defendant forming the basis of this suit was a nullity ab initio and was incapable of being performed or enforced by the court. The 2nd defendant stated that the instant application and the entire suit were contrary to sections 2, 45, 79, 80, 81 and 82 of the Law of Succession Act.

In his replying affidavits, the 2nd defendant averred that the plaintiff had obtained interim orders which were extended from time to time through blatant misrepresentations and falsehoods. He stated that through letters of administration issued on 7th October 1999, he and his late brother David Wamae Muriithi were appointed as joint administrators of his father's estate, the late Joseph Maingi Muriithi. That following family deliberations on how to divide LR No. 7107/2 Embakasi, a surveyor namely, Geoner Systems Ltd. was commissioned to carry out the subdivision and to secure respective deed plans to facilitate the transfer of the plots to the heirs of the deceased.

The 2nd defendant contended that the plaintiff entered into a sale agreement dated 28th October 2004 with the 1st defendant by which agreement the plaintiff purported to purchase property forming part of the deceased's estate. He contended that at the time of the said agreement, the 1st defendant did not possess letters of administration in respect to the deceased's estate and therefore lacked capacity to enter into the agreement with the plaintiff. He averred that in the circumstances, the aforesaid sale agreement was unenforceable and non-binding on the deceased estate. Further, the 2nd defendant stated that at the time of the purported sale, the said parcel had many encumbrances and was therefore not available for sale.

The 2nd defendant averred that the sale agreement did not identify the parcel of land sought to be transferred to the plaintiff and was pegged on the mere anticipation of inheritance by the 1st defendant. He stated that the sale agreement related to LR No. 7102/2 which has since been extinguished through subdivision and partial distribution of the land to the beneficiaries of the estate. The 2nd defendant contended that the plaintiff had no interest in the suit property since the sale agreement on which his claim was anchored was unenforceable against the estate and that the plaintiff's continued occupation thereof was unlawful and illegal.

The 2nd defendant contended that the City Council of Nairobi approved their proposed change of user and subdivision scheme in compliance with the law and that during the entire process when demarcations for public utilities were also made, the plaintiff did not raise any objection as provided under the physical planning laws and regulations. He averred that the land purportedly occupied by the plaintiff fell on the access road demarcated by the City Council of Nairobi and that the 7th defendant was therefore within its rights to ensure that all access public roads were accessible to the public. He stated further, that he could not coerce the 7th defendant, a public body to carry out its mandate and that the allegations that he caused the demolition of the plaintiff's structures were baseless.

The 2nd defendant denied violating the court orders in question and contended that the orders alleged to have been violated had not been served upon him and were not attached to the instant application. He stated that the said orders were obtained under controversy and were vague, ambiguous and a recipe for confusion as they were intended to apply against LR No. 27903 (the suit property) which was nonexistent and did not form the subject matter of the sale agreement between the plaintiff and the 1st defendant. The 2nd defendant contended that the orders in question can be interpreted to apply against approximately 590 plots forming part of the estate which will create anarchy and confusion among persons owning individual parcels of land.

The 2nd defendant stated further that the orders issued on 9th June 2014 were in conflict with orders issued in ELC No. 7 of 2012 which orders were substantially in his favour and conferred upon him possession of some parcels of land forming part of the suit property. The 2nd defendant stated that the orders said to have been disobeyed were against public policy as members of the public had been restrained from utilizing access roads on the land as demarcated by the City Council. He contended that the court had a duty to balance between private and public interest and that in so doing, public interest should override private interest.

The 4th defendant responded to the application through a replying affidavit sworn by Kihaguru Njenga on 18th September 2014 in which he stated that the 4th defendant did not own any property in the vicinity of the suit property. The 4th defendant contended that the allegation that it harassed the plaintiff and demolished his property were untrue and devoid of any factual basis. The 4th defendant stated that it was a stranger to the suit and that the instant application was an abuse of the court process.

The 5th defendant in his replying affidavit sworn on 25th June 2015 denied the plaintiff's allegations. He stated that this suit was instituted by the plaintiff against the 1st, 2nd and 3rd defendants pursuant to a sale agreement by which the 1st defendant undertook to transfer LR No. 7107/2 to the plaintiff. The said parcel of land belonged to the 1st and 2nd defendants' deceased father and that upon his death, the 2nd

defendant was jointly appointed as the administrator of his father's estate together with his brother David Wamae (deceased). That LR No. 7107/2 was subdivided into 576 plots which acquired new numbers and were distributed to the beneficiaries of the estate. The 5th defendant stated that he purchased several plots from the 2nd defendant and other members of his family and that he owned a plot adjacent to the parcel of land which was occupied by the plaintiff.

The 5th defendant contended that the 2nd defendant had challenged the manner in which the plaintiff acquired the suit property since at the time of the purported sale agreement, the 1st defendant did not hold letters of administration. The 5th defendant stated that the substratum of this suit was pegged on the sale agreement whose legality had been challenged and which he was not party to and he opposed the plaintiff's intention to join him as a party to this suit.

The 5th defendant contended that the plaintiff never objected to the subdivision scheme which was developed by a surveyor and approved by the City Council and was therefore estopped from raising objections through his application herein since titles had been issued to respective owners after the subdivision. He averred that the property in which the plaintiff was in occupation fell on demarcated public access road and that the plaintiff's continued occupation inhibited them from accessing their respective properties. He denied threatening the plaintiff and colluding with the 2nd defendant to orchestrate demolition of the plaintiff's structures.

The 5th defendant stated that the orders issued on 9th June 2014 were obtained through falsehoods and misrepresentation of facts by the plaintiff. He averred that the said orders were uncertain and vague since the parcel named as LR. No. 27903 affected the whole parcel of land including land owned by 3rd parties and as such, the said orders were incapable of being properly enforced. He contended that the said orders ought to be discharged since the owners of adjacent properties, investors and developers were unable to access their properties owing to illegal structures erected on the suit land by the plaintiff.

The 5th defendant averred that the 7th defendant exercised its statutory powers in demarcating access roads in the area and that the same should be upheld by the court. He stated that parties should not acquire the benefit of court orders in order to exclude the public from utilizing public access roads. He averred that the plaintiff was undeserving of the orders sought since his ownership claim was pegged on a sale agreement whose validity was highly challenged for want of capacity on the part of the 1st defendant and further, that the application did not meet the legal threshold for granting of injunctive orders. Lastly, the 5th defendant averred that the orders issued could be abused by the police since they were not specific to the parcel in question and that it was necessary that they be vacated.

The 7th defendant responded to the application through a replying affidavit sworn on 22nd December 2014 by its legal affairs director, Mr. Karisalha in which he averred that the 7th defendant was originally a party to this suit until 2nd June 2009 when the plaintiff voluntarily filed a notice to wholly withdraw its claim against the 7th defendant. That upon withdrawal, the plaintiff was ordered to pay the 7th defendant costs of the suit which were outstanding and that it was in the interest of justice that the plaintiff settle the said costs before he can be allowed to seek the 7th defendant's joinder to the suit.

The 7th defendant denied knowledge of the alleged subdivisions and access roads in contention and denied receiving an application for approval from the 4th to 6th defendants regarding creation of an access road on the suit property. The 7th defendant stated that the draft amended plaint was defective and that no new facts and/or evidence had been included to warrant its joinder as a party to the suit herein. The 7th defendant contended that the dispute herein concerned the plaintiff and the 1st to 6th defendants and it was malicious and out of bad faith for the plaintiff to drag it into the same having earlier withdrawn his claim against it. The 7th defendant contended that the application was defective and bad in law and that the plaintiff had approached the court with tainted hands and was undeserving of equitable relief.

The application was canvassed by way of written submissions. Only the plaintiff and the 7th defendant filed their submissions. The plaintiff in submissions dated 6th May 2015 stated that the power to amend pleadings was discretionary and was provided for under section 100 of the Civil Procedure Act and Order 8 Rule 3 of the Civil Procedure Rules. The Plaintiff submitted that he sought to amend its pleadings to join the 4th to 7th defendants to seek damages against the said defendants for their unlawful acts. He contended that the 4th to 6th defendants were agents and/or servants of the 2nd defendant. The plaintiff stated that on 4th September 2009, ELC No. 134 of 2007 was consolidated with the instant suit and that the granting of leave to join the 4th to 7th defendants to the suit was necessary to avoid multiple suits on the same cause.

The plaintiff submitted that the joinder of the 4th to 7th defendants would not introduce a new or inconsistent cause of action since the other defendants claimed ownership/occupation of the suit property and the 7th defendant was alleged to have approved an access road passing through the plaintiff's property. The plaintiff relied on the case of Central Bank of Kenya Ltd vs. Trust Bank Ltd., Court of Appeal at Nairobi, Civil Appeal No.222 of 1998 and averred that the joinder of the 4th to 7th defendants was necessary to enable him plead his case in whole since the said defendants interfered with his quiet possession of the suit property.

In respect to the injunctive order sought, the plaintiff stated that the powers of the court to grant a temporary injunction were discretionary and reference was made to section 3A of the Civil Procedure Act and Order 40 Rules 1 and 2 of the Civil procedure Rules. The plaintiff also relied on the guiding principles for the grant of interlocutory injunction stated in Giella vs. Cassman Brown & Co. Ltd (1973) E. A 358. He submitted that he had established a business on the suit premises which had run for more than 10 years and that the continued absence of injunctive orders against the 4th to 7th defendants would cause his property to be wasted.

The plaintiff averred that the constant interference was causing damage to his business and reputation and that damages would not be an adequate remedy for breach of his legal right to quiet possession. He relied on the case of Hilda Kagura vs. Moses Leshao & 3 others (2012) eKLR for the submission that damages are not always an adequate remedy where there is breach of a legal right. The plaintiff also cited the case of George Munge vs. Sanjeev Sharma & 3 others ELC No. 677 of 2011 and contended that the plaintiff came to court with clean hands and that despite the 4th to 7th defendants demolishing his wall, he had not barricaded the alleged road.

In further submission, the plaintiff averred that the power of the court to punish for contempt of court orders was enshrined in section 5 of the Judicature Act, section 63 of the Civil Procedure Act and Order 40 Rule 3(1) of the Civil Procedure Rules. The plaintiff submitted that on 8th April 2009, the court issued interim orders restraining the 1st to 3rd defendants from alienating the suit property and interfering with his occupation and enjoyment of the suit property which orders were confirmed by the court on 3rd November 2011. He averred that the 2nd defendant acted in contempt of the orders by causing subdivision and sale of the disputed properties to the 4th to 6th defendants and by continuously harassing him with threats to demolish the structures on the suit property.

The plaintiff submitted that, on 7th June 2014, with full knowledge of existing court orders and in outright violation thereof, the 4th to 6th defendants as agents of the 2nd defendant demolished the boundary wall around the suit property. The plaintiff relied on the case of Teachers Service Commission vs. Kenya National Union of Teachers & 2 others (2013) eKLR for the submission that the reason courts punish for contempt is to preserve and safeguard the rule of law. Further reliance was placed on the case of Hadkinson vs. Hadkinson (1952) ALL ER 567 and Africa Management Communication International Ltd vs. Joseph Mathenge Mugo & another (2013) eKLR for the proposition that unless and until an order is discharged, every person against whom an order is made has an obligation to obey it.

The 7th defendant in submissions dated 3rd June 2015 argued that the plaintiff voluntarily filed a notice to withdraw its claim against it on 3rd June 2009. The 7th defendant submitted that costs awarded to the 7th

defendant had remained outstanding and that it was only just and fair for the plaintiff to pay the said costs first before being allowed, if necessary, to join the 7th defendant in the suit.

The 7th defendant contended that the main issue in the suit herein is the sale agreement entered into by the plaintiff and the 1st defendant to which it was not party. The 7th defendant argued that, that was an issue which could be solved by the plaintiff and beneficiaries of the estate of the deceased, Joseph Maingi Muriithi and further, that no new facts or evidence had been adduced to warrant its joinder to the suit. Reference was made to section 41 of the Physical Planning Act and it was submitted that the plaintiff had not exhausted the procedure of challenging the decision of the 7th defendant through appeals to the liaison committees and finally to the High Court.

The 7th defendant submitted that the court lacked jurisdiction to determine the suit herein since the issue raised concerned succession and that the plaintiff as a bonafide purchaser for value should have applied to be joined as a beneficiary of the estate of the deceased in the succession proceedings. The 7th defendant contended that the 4th and 6th defendants had alleged that the disputed Plot No. 27903 was nonexistent the same having been subdivided into 576 plots which were distributed to the beneficiaries of the deceased's estate. The 7th defendant argued that the right person to be sued would therefore be the administrator of the said estate and the person who sold the disputed property to the plaintiff.

The 7th defendant averred that the plaintiff has not established any cause of action against the 7th defendant to warrant the injunctive orders sought. He submitted that save for alleging that the 7th defendant had approved the establishment of an access road, no approval plan from the 7th defendant was annexed to the plaintiff's affidavit. The 7th defendant stated that it was carrying out its statutory duties as per the Physical Planning Act and could not be restrained when the plaintiff had not shown that it had approved the establishment of the said access road.

The 7th defendant relied on the case of Giella vs. Cassman Brown & Co. Ltd (1973)(supra) and submitted that the plaintiff had not established a prima facie case with probability of success against it.

The 7th defendant cited the case of Habib Bank A.G Zurich vs. Eugene Marion Yakub Nai Civil Application No. 43 of 1982 and averred that the plaintiff's suit was weak, misdirected and unsustainable. The 7th defendant contended that the suit did not disclose any cause of action against it and further, that the injunctive orders which were sought in respect of LR No. 27903 which was nonexistent following its subdivision could not issue in vain. Lastly, it was submitted that the plaintiff had not established that he was the absolute and indefeasible owner of the suit property and that since the sale agreement between the plaintiff and the 1st defendant was void ab initio for want of capacity on the part of the 1st defendant, no proprietary rights were conveyed to the plaintiff. The 7th defendant submitted that the plaintiff would not suffer irreparable harm which cannot be compensated in damages since the value of the land can be quantified should the plaintiff succeed at the trial.

I have considered the plaintiff's application and the opposition thereto by the respondents. The plaintiff has applied for joinder of new parties to the suit. Applications for joinder are governed by Order 1 Rule (10) (2) of the Civil Procedure Rules which empowers the court, at any stage of the proceedings, upon application by either party or on its own motion to order the joinder of parties. The test in applications for joinder is whether the party sought to be joined is one whose presence before the court is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit.

In his application, the plaintiff contended that the 4th to 6th defendants forcefully and unlawfully demolished his wall. In his draft amended defence, the plaintiff pleaded particulars of malice on the part of the 2nd to 6th defendants as follows:-

- a. Entering into sale agreements and transfer of sub divided plots on the suit property despite the existence of a court order stopping any changes on the suit property.

- b. Causing approvals of the plaintiff's property and changing the same into an access road.
- c. Causing untold disturbance and expense to the plaintiff who has had to make numerous efforts to ward off thugs hired by the 4th to 6th defendants.
- d. Unlawfully demolishing the plaintiff's business on the ground through the actions of the 7th defendant under the instructions of the 2nd defendant.

In my view, the plaintiff has not demonstrated the interest if any which the 4th to 6th defendants have in this suit. He has not demonstrated how the 4th to 6th defendants caused the approval of the subdivision scheme which converted the suit property into an access road. The plaintiff has also not demonstrated that the 4th to 6th defendants participated in the demolition of his wall. In my view, the 4th to 6th defendants are not necessary parties whose presence will enable the court to effectually and completely adjudicate upon and settle all questions involved in this suit and their joinder in the suit cannot be allowed.

On its part, the 7th defendant objected to its joinder in the suit by stating that the plaintiff withdrew its claim against it on 2nd June 2009 and that costs which were awarded to it by the court remained outstanding. The 7th defendant averred that it was in the interest of justice that the plaintiff settled its costs first before being allowed to seek its joinder to the suit. It is not disputed that the plaintiff withdrew its case against the 7th defendant which was then the 4th defendant herein and that costs were indeed awarded to the 7th defendant. The plaintiff has not denied that he has not settled the said costs. I am in agreement with the 7th defendant that the plaintiff should first settle the said costs before bringing an application to join the 7th defendant once again to the suit.

The plaintiff's other prayer was for a temporary injunction. The property in dispute herein is a portion of LR No. 27903. The plaintiff entered into a sale agreement with the 1st defendant on 28th October 2004 for the sale of an unidentified portion measuring 1.16 acres out of the then existing larger parcel of land known as LR No. 7102/2 which was measuring approximately 50 acres. The 1st defendant is the son of the late Joseph Maingi Muriithi who was the registered proprietor of LR No. 7102/2. Following succession proceedings in Nairobi HC Succ. Cause No. 1212 of 1998, *In the matter of the estate of Joseph Maingi Muriithi*, LR No. 7102/2 was subdivided into 590 plots which acquired new numbers namely 27903/21, 27903/24- 117, 27903/117 – 593 and 5 acres of public utility land which was to be surrendered to the government.

The defendants have challenged the plaintiff's proprietary interest in the suit property and have averred that the sale agreement on which the plaintiff's claim is anchored is unenforceable since the 1st defendant had no capacity to enter into the agreement. The defendants have contended that the 1st defendant was not the administrator of the estate of Joseph Maingi Muriithi who was the registered owner of the original parcel known as LR 7102/2 and as such that agreement is not binding on the deceased's estate.

It is not in dispute that the 1st defendant did not have letters of administration to enable him deal with property that was still registered in his deceased father's name. Section 45(1) of the Law of Succession Act makes it an offence for any person to dispose property registered in a deceased's name except as authorized by law or by a grant of representation. The Court of Appeal in the case of Esther Njoki Rurigi vs. Patrick Gathenya Nairobi CA 128 of 2002 stated as follows in this respect:-

“As Peter Rurigi Njoroge and his relatives had not been appointed as legal representatives of the deceased proprietor they had no capacity to deal with the suit land. It follows that any agreement reached between them and the Land Registrar and also with the respondent on the exchange of two parcels of land is null and void and of no legal effect.”

A similar finding was made in the case of Elly Odhiambo Onyukavs. Ayub Odhiambo Migwalla, Civil Appeal No.81 of 2002, where the court held that:-

“A person who has not taken out letters of administration has no capacity to enter into a sale agreement in respect of the property still registered in the name of his late father as the property is protected by Section 45(1) of the Law of Succession Act”.

In my view, since the 1st defendant had no capacity to sell the disputed property to the plaintiff, the defendants’ contention that the sale agreement dated 28th October 2004 is illegal is not farfetched. For that reason, I am not satisfied that the plaintiff has established a prima facie case with probability of success against the defendants.

The plaintiff has also sought a directive suspending, revoking or quashing the approvals which are alleged to have been given by the 7th defendant pending the hearing of the suit herein. I am of the view that, such order cannot be issued at interlocutory stage and should await the hearing of the suit.

The final relief sought by the plaintiff was the punishment of the 2nd defendant for contempt of court. The plaintiff has sought to have the 2nd defendant committed to imprisonment for being in breach of the court orders issued on 3rd November 2011. The conditions necessary for an order of committal for contempt of court are well established in our law. In Republic vs. Nairobi City County Ex-Parte David Peter Ndambuki (2015) eKLR the court stated as follows:-

“It is trite law that where committal is sought for breach of an order, it must be made clear what the defendant is alleged to have done. The notice of motion must state exactly what the alleged contemnor has done or omitted to do which constitutes a contempt of court with sufficient particularity to enable him to meet the charge. The necessary information must be given in the notice itself. The slightest ambiguity to the order can invalidate an application for committal as ambiguity can in turn lead to the standard of proof, which is the criminal standard, not being attained especially on affidavit evidence. Therefore the law is that no order requiring a person to do or abstain from doing any act may be enforced by contempt unless a copy of the order has been served personally and endorsed with a notice informing him that if he disobeys the order he is liable to the process of execution. In other words the Court will only punish for contempt of an order if satisfied that the terms of the order are clear and unambiguous and that the defendant has a proper notice of the terms and the breach of the order has been proved beyond reasonable doubt”

I am aware that courts have since moved from the position that the order alleged to have been breached must be personally served on a person sought to be punished together with the penal notice before contempt can be proved. Knowledge of a court order has been held to be sufficient thereby dispensing with personal service for the purposes of contempt proceedings. See, Shimmers Plaza Limited vs. National Bank of Kenya Limited Nai. CA 33 of 2012.

The order in respect of which committal is sought must not be ambiguous. Clause 2(a) of the order made on 3rd November 2011 restrained the 1st, 2nd and 3rd defendants from entering into any sale agreement, selling, transferring, disposing or pledging, leasing, charging or in any other manner howsoever alienating or dealing with all that piece of land known as LR No. 7102/2 Embakasi/Nairobi now mutated to LR No. 27903/1-27. The 2nd defendant contended that the orders were vague and ambiguous and could be interpreted to apply against approximately 590 plots forming part of the estate. I am in agreement with the 2nd defendant that the order was not very clear in that it did not identify the specific parcel against which it was to be applied.

The standard of proof of contempt of court is higher than proof on a balance of probabilities, but not beyond reasonable doubt. See, the case of Mutitika vs. Baharini Farm Limited (1985) KLR 229. The plaintiff contended that despite the court issuing injunctive orders restraining the 1st to 3rd defendants from interfering with his peaceful possession of the suit property, the 2nd defendant sold and transferred properties which were adjacent to the disputed property to the 4th to 6th defendants. There is no evidence before the court to substantiate these allegations. There is also no proof that the 2nd defendant was

involved in the demolition of the plaintiff's wall which was allegedly carried out by the 4th to 6th defendants. In my view, the prayer seeking to have the 2nd defendant committed to jail for contempt of court has no merit and must fail.

The upshot of the foregoing is that the plaintiff's Notice of Motion application dated 9th June 2014 fails wholly and the same is hereby dismissed with costs to the defendants.

Delivered and Dated at Nairobi this 17th day of February, 2017.

S.OKONG'O

JUDGE

In the presence of

Mr. Obondi h/b for Ligunya for the Plaintiffs

N/A for the Defendant

Kajuju Court Assistant