



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 69 OF 2016

JACINTA WANJIRU MWENGA.....PLAINTIFF

VERSUS

SAMWEL THEURI.....1ST DEFENDANT

LOISE WANGARE RATEMO.....2ND DEFENDANT

DISTRICT LAND REGISTRAR NAIVASHA.....3RD DEFENDANT

THE ATTORNEY GENERAL4TH DEFENDANT

RULING

(Application for contempt; no proof of violation of the order made; application dismissed)

1. The application before me is that dated 20 September 2016. It seeks orders that the 2nd defendant/respondent, one Loise Wangare Rateмо, be committed to civil jail for a term of six (6) months for being in contempt of court. It is contended that the respondent has deliberately disobeyed the order of this court which was issued on 15 August 2016 (the order itself was made on 11 August 2011). The application is opposed and before I go to the gist of it, I think it is wise that I lay down the background leading to this application.

2. This suit was commenced by way of a plaint filed on 4 March 2016. The case of the plaintiff, who is the applicant herein, is that she has been the registered proprietor of the land parcel Miti Mingi/Mbaruk Block 5/633 (Kianjoya) (hereinafter "the suit land"). In the year 2012, she borrowed some money from the 1st defendant and deposited her title deed with him. In the year 2015, she started constructing a house on the property, only to be confronted by the 2nd defendant (respondent herein), who claimed that she has purchased the suit land from the 1st defendant. The plaintiff then commenced investigations and discovered that the 1st defendant had transferred the property to himself. It is her contention that all this was done by way of fraud as she never executed any transfer forms. In this suit, she has asked for a declaration that the suit land belongs to her and cancellation of the title of the 1st defendant.

3. Together with the suit, the applicant filed an application for injunction seeking orders to restrain the 1st defendant from dealing, disposing off, transferring, charging, alienating or in any other way interfering with the suit land. On the same day, Mrs. Mukira, learned counsel for the applicant, appeared before me under certificate of urgency, and I did issue orders of inhibition pending inter partes hearing of the application. The application was argued inter partes on 9 August 2016 and I reserved the ruling for 6 September 2016.

4. On 11 August 2016, Mrs. Mukira yet again appeared before me under certificate of urgency, having filed an application dated 10 August 2016 on behalf of her client. This application was now directed at the 2nd defendant/respondent. It sought orders to have the 2nd defendant restrained by way of an injunction "from any adverse dealing, construction, entering, remaining in, disposing off, transferring, charging, alienating or in any other way interfering with (the suit land)...".

5. Upon considering the application, I made an order "stopping the 2nd defendant and/or her servants/agents from making any or any further developments, erecting any structures or proceeding with construction in the suit land pending inter partes hearing." The 2nd defendant was also barred from selling, leasing, charging or in any other way entering into any disposition over the said land pending inter partes hearing. I gave the date of 6 September 2016 for inter partes hearing.

6. It is the above order which the applicant now contends that the respondent has violated. In her supporting affidavit, the applicant has averred that despite the above order being served upon the respondent, she has continued to undertake adverse dealings over the suit land and has even moved into the suit land. She has annexed photographs and a video showing the respondent moving into the disputed property. It is also alleged that the respondent proceeded with developments secretly behind the closed gate. Her advocate did write a letter dated 21

August 2016 to counsel for the respondent, but this did not elicit a response. In her submissions, Mrs. Mukira inter alia submitted that despite being served on 17 August 2016, the respondent moved into the suit property on 28 August 2016.

7. In her response, which was echoed by her counsel, Mr. Githui, it was argued that there was no violation of the order of 11 August 2016. Mr. Githui submitted that the respondent never made any structures and did not sell or charge the property. It was submitted that there was nothing stopping the respondent from moving into the suit land. He further submitted that there is no proof of any new developments having been made after the order was issued. He submitted that when the order was made, the respondent was already in the premises.

8. Both counsels referred me to various authorities which I have read and considered.

9. The core question in this application is whether or not the respondent is in contempt of the order made on 11 August 2016. It will be noted that the order that was made stopped the respondent from undertaking any new developments on the suit land and also stopped her from selling, leasing, charging, or from entering into any other disposition. The order did not canvass the moving into the property or its habitation pending inter partes hearing. In my discretion, I did not consider it wise to enlarge the interim order to cover this aspect of the matter. That issue however remains for determination during the inter partes hearing of the application. I therefore am not of the opinion that there was a violation of the order of 11 August 2016, assuming that the respondent moved into the suit land after the order was made and served. Although it was said that there were additional developments made behind the closed gate of the premises, I have not seen any proof of this. I am afraid that I cannot hold, on the mere oral averment of the applicant, that there have been developments made by the respondent after the order was made and issued. Additional evidence needed to be tabled for me to be persuaded of this.

10 I really do not see the need of saying more. On the facts presented, I am unable to hold that the respondent has been in contempt. I therefore find no merit in this application and it is dismissed with costs.

11. I will at the delivery of this ruling, give a new date for the application dated 10 August 2016 since the same did not take off as earlier scheduled.

12. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 9th day of February 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :