



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO. 27 OF 2012

1. MIRKO BLAETTERMANN (*suing through his
power of Attorney SHABIR HATIM ALI*)

2. PUBLIC TRUSTEE (*suing on behalf of HELMUT KOST*).....**PLAINTIFFS**

=VERSUS=

1. DAVID MWANGI MUIRURI

2. G. HOTMAN COTOVA

3. EMPIRES AND PARTENERS INVESTMENT.....**DEFENDANTS**

R U L I N G

1. The Application before me is dated 4th January, 2016. In the Application, the Defendants are seeking for the following orders:-

(a) THAT the 1st Plaintiff/Respondent MIRKO BLAETTERMAN and his alleged agent SHABIR HATIM ALI, their servants, agents and/or any persons under their authority in the suit premise be compelled to appear to court to show cause why they should not be committed to Jail for a term not exceeding six (6) months for disobeying the court orders issued on 6th day of November 2012 and 10th July 2014 and the alleged 1st Plaintiff's agent be compelled to produce the 1st Plaintiff/Respondent MIRKO BLAETTERMAN in court within 14 days to clarify the alleged agent's capacity and authority in the suit and the Court Bailiff be ordered to visit the suit premises and give his report to the court.

(b) THAT the 1st Plaintiff/Respondent and his alleged agent SHABIR HATIM ALI, their servants, Agents and/or any persons acting under their authority in the suit premises be subsequently committed to jail for a term not exceeding six (6) months for defying Court orders.

(c) THAT since the orders for injunction have been discharged, the 1st Plaintiff/Respondent and his alleged agent be compelled to obey the Court Orders and

status quo on the suit property be maintained as at the very 1st day of filing this suit pending final determination of the entire suit herein.

(d) THAT the costs of this application be provided for.

2. The Application is premised on the grounds that on 6th November, 2012, the court directed that any further appearance by the parties should be in person and not through persons holding powers of attorney; that due to non compliance with the orders, the court discharged the injunctive order and that the Plaintiff has continued to disobey the orders of the court.

3. It is the Defendants' case that the Plaintiff's alleged agent continues to damage and vandalise the suit property.

4. In response, the 1st Plaintiff's alleged Attorney deponed that the Defendants have failed to show how he is in contempt of the orders of the court; that the order of 6th November, 2012 did not mean that he cannot be a witness in this matter; that the Court of Appeal directed that the matter should proceed as it is and that there is no injunction that has been issued against the Plaintiff to warrant the prayers that are being sought.

5. The parties filed submissions which I have considered.

6. The Defendants' Application is premised on the orders that were issued by Meoli J on 6th November, 2012.

7. The orders that were issued by the court included an order of injunction restraining the Defendants/Applicants from trespassing on the suit property pending the hearing of this suit and for parties to present their evidence in person and not through persons holding powers of attorney.

8. The matter is a part heard.

9. The issue as to whether the 1st Plaintiff has disobeyed the orders of the court by not calling the 1st Plaintiff in person to testify cannot arise now considering that the 1st Plaintiff has not closed his case.

10. In any case, non compliance of that order cannot amount to contempt of court because the order did not compel the 1st Plaintiff to attend court, but rather the court directed that for the suit to succeed, it is imperative that the parties testify in person and not through Proxies or Attorneys.

11. Although this court discharged the injunctive orders, it did not make any positive orders that have been disobeyed by the Plaintiffs. Consequently, the Plaintiffs cannot be said to have been in contempt of the orders of the court.

12. The issue of the suit property being vandalised can only be ascertained after full trial. All I can say for now is that the numerous Applications that have been filed by the Defendants are contributing to the delay in the prosecution of this suit. The Defendants cannot therefore be heard to say that the suit property is being vandalised when they are the ones who are delaying the finalisation of the suit by the filing of the numerous Applications.

13. It is for those reasons that I dismiss the Application dated 4th January, 2016 with costs.

Dated, signed and delivered in Malindi this 3rd day of **February, 2017.**

O. A. Angote

Judge