



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI
MILIMANI LAW COURTS
ELC. CASE NO. 1200 OF 2013

GEORGE MWANGI KAMAU.....PLAINTIFF

VERSUS

CECILIA WANJIKU KURIA.....DEFENDANT

STEPHEN WACHIRA NDAMBURI....1ST INTERESTED PARTY

A.W. NDUNGU.....2ND INTENDED INTERESTED PARTY

A chair lady of URUTAGWO MWIRUTI WOMEN GROUP

RULING

Coming up before me for determination is the Notice of Motion dated 1st October 2014 in which the Plaintiff/Applicant seeks for an order committing the Defendant/Respondent to civil jail for a term not exceeding 6 months for disobeying the orders of this court made on 14th February 2014 restraining the Defendant/Respondent from trespassing, destroying, wasting or alienating Plot No. 25 within L.R. No. 6845/67 (hereinafter referred to as the "suit plot"). The Plaintiff/Applicant also prayed for an order directed at the Defendant/Respondent to compensate the Plaintiff the market value of the suit plot.

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of the Plaintiff/Applicant, George Mwangi Kamau, sworn on 1st October 2014, in which he averred that he is the owner of the suit plot. He further averred that he filed this suit on 7th October 2013 and that the suit was heard and a ruling was delivered by this court. He further averred that he extracted an order of the court which was issued on 26th March 2014. It was his further averment that the Defendant/Respondent disobeyed the said order by trespassing on the suit property on 1st September 2014. He stated that the acts of the Defendant are in utter contempt of the court orders and for that reason this Application should be allowed.

The Application is contested. The Defendant/Respondent, Cecilia Wanjiku Kuria, filed her Replying Affidavit sworn on 7th November 2014 in which she confirmed that she is the one who sold the suit plot to the Plaintiff/Applicant and that it is not true that she has trespassed upon the suit plot or repossessed it as claimed by the Plaintiff. It was her averment that she has no interest in the suit plot.

The issue I am required to determine is whether or not there is contempt of court on the part of the Defendant and if so, whether to commit her to civil jail. The applicable law is as follows:

Section 63(c) of the Civil Procedure Act, 2010 provides that,

“In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold”.

Further, it is provided under **Order 40 Rule 3(1) of the Civil Procedure Rules, 2010** that,

“3(1) In case of disobedience, or breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release”

It is true that this court did deliver a Ruling on 14th February 2014 in which it granted the Plaintiff/Applicant an order of injunction in respect of the suit plot pending the hearing and determination of this suit. While the Plaintiff/Applicant asserts that the Defendant/Respondent has disobeyed that order, the Defendant/Respondent has denied this, stating that having sold the suit plot to the Plaintiff, she has no interest therein. The Plaintiff/Applicant has not been able to counter this assertion to the satisfaction of this court. What emerges is that the suit plot appears to be claimed by other parties who have been enjoined into this suit. It also emerges that since that Ruling was delivered, the Plaintiff/Applicant has not taken any steps to further prosecute this suit to its final conclusion.

Overall, I am not convinced that the Defendant/Respondent is in contempt of court and I accordingly do dismiss this Application. Costs in the cause.

The Plaintiff is directed by this court to proceed to set this suit down for hearing at the earliest opportunity in order to arrive at a final determination herein.

It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 22ND DAY OF SEPTEMBER 2017.

MARY M. GITUMBI

JUDGE