



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 91 OF 2017

JOHN MWANGI..... PLAINTIFF

VERSUS

JOAN NABANGALA MUSUNGU..... DEFENDANT

R U L I N G

1. The application dated 29/6/2017 has been filed by the plaintiff. It seeks an order that the defendant be committed to civil jail for a period of up to 6 months for disobeying this court's orders issued on 18/5/2017. It also seeks an order that the defendant has no right of audience before this court unless he fully purges her contempt.

2. From the contents of the application and the supporting affidavit the applicant's case is that this court issued an order on 18/5/2017 which was extracted, sealed, endorsed with a penal notice and served upon the respondent on 22/5/2017. The applicant further avers that the orders were extended on 30/5/2017 but the respondent did not comply with the orders, and up to the date of the instant application, she continued to trespass and construct a house on the suit land. She is said to be in use and control of the suit land and intends to live therein in violation of the applicant's proprietary rights over the property and despite the orders of this court.

3. The respondent is also said to be very hostile to the applicant and she has denied him access to the land and he cannot top dress his maize crop. The applicant avers that the actions of the respondent are a threat to the Rule of law and are aimed at casting the court's power and authority into disrepute and therefore the court should exercise its power and punish the respondent.

4. The respondent filed a brief replying affidavit stating that the house complained of was built on 11/5/2017 before the orders mentioned were issued by this court. The respondent therefore avers that she has not trespassed onto the land in question.

5. The applicant filed his submissions on the application on 4/8/2017 and the respondent filed hers on 29/8/2017.

6. I have considered the rival submissions of the parties. The only issue for determination in this matter is whether the respondent has committed acts of contempt in respect of the orders of this court issued on 18/5/2017 which were later extended. The applicant had annexed to the supporting affidavit to his application for injunctive orders dated 17/5/2017 some photographs showing that a structure was in the process of being constructed on the suit land. In that application the applicant averred as follows in this supporting affidavit:-

“That since then I have enjoyed quiet possession of my parcel of land until 13/5/2017 when

the defendant trespassed on my said land, destroyed my maize, cut down my trees and started constructing a structure or house on my said land (see copies of photographs attached hereto and marked JM2 a, b, c, d, e and f”.

7. The orders said to have been disobeyed were first obtained on 18/5/2017, **5 days** after the date of alleged construction. It is notable that by the date of filing of the instant application which also exhibits photographs the only new development witnessed on the structure, is the finishing of the walls with mud paste and the affixing of a door to the house. There is no evidence that the finishing of the house and the fixing of a door could take more than the 5 days between 13/5/2017 and 18/5/2017. More importantly, there is no direct evidence presented to court that the respondent finished the said house after the court issued its orders of 18/5/2017, or that the respondent currently lives in the house.

8. Notably the instant application was filed on 29/6/2017 before the court confirmed its injunctive orders against the respondent vide its Ruling on 28/9/2017. No further affidavit has been filed to demonstrate that there was breach of the court’s orders after the latter date. However the applicant’s contention is that the orders issued on 18/5/2017 and subsequently extended were violated. I do not find any evidence to conclusively support the applicant’s claim of violation of those orders. I have already stated that there is doubt as to whether the house was not complete by 18/5/2017. I therefore find that the application dated 29/6/2017 is without merits and I dismiss it with costs to the respondent.

Dated, signed and delivered at Kitale on this **20th** day of **December, 2017.**

MWANGI NJOROGE

JUDGE

20/12/2017

Before – Mwangi Njoroge Judge

Court Assistant – Isabellah

Ms. Mwemeke for Plaintiff/Applicant

Ms. Sitati holding brief for Arunga for Respondent

Ruling read in open court.

MWANGI NJOROGE

JUDGE

20/12/2017