



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT MILIMANI
LAND CASE NO. 643 OF 2015

MARY WANJA KAROBIA.....PLAINTIFF/APPLICANT

=VERSUS=

NAIROBI CITY COUNTY.....DEFENDANT/RESPONDENT

RULING

BACKGROUND

1. The Plaintiff/Applicant filed a suit against the Defendant/Respondent in which she wanted orders of a permanent injunction restraining the respondent from interfering with possession of her property known as *Plot No.244 Kariobangi South River Bank* (suit property). The applicant also wanted declaratory orders that the respondent's notice to vacate the suit property and demolition of the same was illegal null and void.
2. The applicant contemporaneously filed an application for injunctive orders restraining the respondent from interfering with the suit property and compelling the respondent to remove a vacation and demolition notice which had been issued. The application was placed before Lady Justice Gacheru on 7th July 2016. The Judge certified it urgent but did not issue any interim orders. The judge ordered that the same be served for inter-partes hearing on 21st July 2015.
3. On 21st July 2015, the application came up for inter-partes hearing but it could not proceed as the respondent's counsel had not filed a replying affidavit. The judge then made an order that the status quo be maintained. The application was then set for hearing on 14th October 2015. The matter was placed before Lady Justice Gitumbi who extended the *status quo* and set hearing date for the application. On 29th October 2015, the matter was placed before Lady Justice Gacheru who gave directions that the application be disposed of by way of written submissions. The status Quo order was extended until the next mention which was not specified.

APPLICANT'S APPLICATION

4. On 10th March 2016, the applicant filed an application in which she sought to commence contempt proceedings against the Governor of the Respondent. In the same application, the applicant sought orders of committal to civil jail of the respondent's Governor or its agents and servants for contempt of court order.
5. The applicant contends that the Governor of the respondent or his servants and agents disobeyed the

court orders which were issued on 7th July 2015 and subsequently extended on 29th October 2015.

RESPONDENT'S CONTENTION

6. The Respondent opposed the applicant's notice of motion based on grounds of opposition dated 10th April 2017 and filed in Court on 13th April 2017. The respondent contends that the suit as well as the application are misconceived, baseless, frivolous, vexatious and an abuse of the process of court. That the court orders given on 21st July 2015 and subsequently extended on 29th October 2015 were not served upon the Governor.

7. In the alternative, the respondent contended that the said orders if they were served did not contain a penal clause and that a court cannot be used to sanction an illegality.

ANALYSIS

8. I have given due consideration to the applicant's application well as the opposition thereto by the respondent. To begin with I point out that it is no longer necessary to seek leave to commence contempt proceedings. To succeed in an application for contempt, the applicant must demonstrate the following:-

i. That there was a court order which was issued.

ii. That the court order was clear and unambiguous.

iii. That the Court order was served upon the contemnor or that the contemnor was aware of the order.

iv. That the court order contained a penal clause warning of the consequences of disobedience of the order.

v. That the contemnor breached that order.

9. In the instant case, I have to point out that no order was given on 7th July 2015 restraining the respondent from doing anything. It is on 21st July 2015 that the judge made an order of maintenance of status quo. The order was subsequently extended on 14th October 2015 and 29th October 2015.

10. On 21st October 2015 when the applicant's lawyer asked that the status quo be maintained, the respondent's advocate was present. Again when the orders were extended on 29th October 2015, the Respondent's Counsel was present. It is important however to note that the status quo was not defined.

11. There is no evidence that the order was served upon the Governor of the respondent or its agents or servants. The order did not contain a penal clause warning of consequences of disobedience. Proof of contempt is beyond a balance of probability. The proceedings being of a criminal nature, a contemnor may be sent to jail. In the case of **Duncan Manuel Murigi Vs Kenya Railway** the court while emphasising the need for personal service cited with approval the case of **Bramblevale Ltd (1970)CH 128 at Page 137 in which Lord Denning** stated that;-

“ A contempt of Court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved...”.

12. The Status Quo was not defined in the order. The order was therefore not clear and was ambiguous. In the case of **Ochino & another Vs Okombo & 4 others, Civil Appeal No.36 of 1989**, the Court of Appeal Judges in dealing with a case where the High Court had jailed a contemnor for disobeying orders of maintenance of status quo which had not been defined held that a court will only punish as a contempt of breach of injunction it is satisfied that the terms of the injunction are clear and unambiguous.

13. In the present case the terms of the injunction were not clear in that there was no description of what the status quo to be maintained was. As it was not clear what the respondent had been asked not to do, I do not find that the Governor of the respondent or any of its servants or agents can be guilty of contempt.

CONCLUSION.

14. From the above analysis, it is clear that the applicant has failed to prove any contempt on the part of the respondent's Governor or its agents or servants. The applicant's application is dismissed with costs to the respondent.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **18th** day of **December 2017**.

E.O.OBAGA

JUDGE

In the absence of parties who were aware of the date of delivery of Ruling.

Court Assistant: Hilda

E.O.OBAGA

JUDGE