



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
PETITION NO. 15 OF 2015

1. HENRY CHANGAWA BOMU
2. MWALIMU AHMED
3. JOHNSON MWAREMA MWANJE
4. FERDINARD CHARO
5. PETER THOYA IHA
6. JAMES MRAMBA THOYA
7. RAYMOND KAZUNGU KENGA
8. SARAH KARISA THETHE
9. CONSTANCE GEORGE KAINGU
10. KARISA BONGO MASHA (*suing on behalf of the 5190 members*

*ihaleni community based
organisation.....*PETITIONERS/APPLICANTS

=VERSUS=

1. KINDIMBA LIMITED
2. KILIFI PLANTATION LIMITED
3. NATIONAL LAND COMMISSION
4. KILIFI COUNTY GOVERNMENT.....RESPONDENTS

R U L I N G

1. In their Application dated 11th April, 2016, the Petitioners are seeking for the following orders:-

- (a) THAT CHRISTOPHER WILSON be arrested and and comitted to civil jail for a

period of six months or such period as this honorable court deems fit.

(b) THAT CHRISTOPHER WILSON, the Director of the 2nd Defendant/Respondent is cited for contempt of the orders of the Honourable Justice Angote issued on 14th October 2015 and 28th October 2015.

(c) THAT the Respondent be ordered to pay costs of the Applicant and other incidental costs.

2. The Application is premised on the grounds that the order that was issued by this court on 14th October, 2015 specifically restrained the Respondents from carrying out any construction, eviction, sale, transfer, destruction or any other further dealing on the land or interfering with the Applicants' use of the land pending the interpartes hearing of the Application.

3. According to the Applicants, on 28th October, 2015, the court ordered for status quo to be maintained; that the offer of sale, construction and cultivation of the suit property disrupts the status quo and that the rule of law and dignity of the court ought to be upheld at all times.

4. The 1st Petitioner has deponed that the 1st and 2nd Respondents have, through their employees, agents and/or servants continued with the sale of the plots within the suit land in contravention of the said orders; that the Respondents have also engaged in construction works on the land and that the Respondents have also continued with cultivation of sisal on the land.

5. In his response, the alleged contemnor deponed that there is no discernible disobedience directly attributable to him; that the photographs annexed on the Application do not identify the properties in question; that the Petitioners should have produced a search to establish if the suit property has been sold and that it is the Applicants who trespassed on the land and have since been charged in court.

6. The advocates filed their respective submissions and authorities which I have considered.

7. On 14th October, 2015, the court granted to the Applicants an order restraining the 1st and 2nd Respondents from “constructing, evicting, selling, transferring, carrying out destruction and or interfering with the Applicants use and occupation of plot No. 11, 12, Block No.4236/4, Block No. 5023 and Block 5018 Kilifi for 14 days.

8. When the matter came up for hearing on 28th October, 2015, the court ordered for the status quo to be maintained, meaning that things were to remain the way they were as at 28th October, 2015.

9. The Applicants have annexed several photographs on their affidavits in support of the allegations that the alleged contemnors or their servants are in breach of the order of the court.

10. I have looked at the photographs. The first two photographs are of a signage along a road with the following words “ KILIFI COUNTY PROPERTIES PLOT FOR SALE 100 X 100 FT”.

11. The contacts of the person selling the plots has been given on the signage.

12. There is no evidence before me to show that it is the alleged contemnor, or his servants who put up the alleged signage, or that the advertisement actually refers to the suit property. There is also no evidence before me to show that the said signage was put up by the alleged contemnor or his servants after the order of this court was granted.

13. The other photographs show some unidentified people on an unidentified parcel of land.

14. The photographs that the Applicants have relied on do not show that the alleged contemnor is responsible for the actions depicted in the photographs.

15. Indeed, the court is unable to ascertain the identity of the people on the land in the photographs.
16. The Applicants did not annex an affidavit by the person who took the photographs and the circumstances under which those photographs were taken.
17. In the circumstances, I find and hold that the Applicants' Application does not meet the threshold required for a person to be held to have been in contempt of the orders of the court.
18. For those reasons, I dismiss the Application dated 11th April, 2016 with costs.

Dated, signed and delivered in Malindi this **1st** day of **July**, 2016.

O. A. Angote

Judge