



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO. 92 OF 2011

SCHOOL MANAGEMENT COMMITTEE

BAGARIA PRIMARY SCHOOL.....APPLICANT

AND

THE HON. ATTORNEY GENERAL &

3 OTHERS.....RESPONDENT

CHARLES NJENGA KARIBEINTERESTED PARTY

RULING

(Application for contempt; order allegedly flouted issued after an award of Land Disputes Tribunal; there being an order staying the award and subsequent orders; not proper to file the application within the judicial review motion as the order was never issued within the judicial review suit; doubtful if there was any violation; application dismissed)

1. The application before me is that dated 3 May 2016 filed by the interested party in this suit. It is an application seeking to have Njuguna Kinyua, Mbugua Mugikenyi, Matheri Njenga, Bethuel Waithaka and Gerald Ngugi, in their capacity as the School Management Committee, Bagaria Primary School, held in contempt of court orders and to be committed to civil jail for a period of 6 months. It is alleged that they disobeyed orders given on 26 July 2011, in Molo PM Land Dispute Case No. 10 of 2011 which decision was in respect of a land parcel No. 1297 and which directed a government surveyor to straighten the disputed boundary.

2. Before I go to the merits of the application, I think it is necessary to set out the background to this suit.

3. This case is a judicial review motion, seeking orders of certiorari to quash a decision of the Molo Land Disputes Tribunal made on 23 May 2011. The complainant before the Tribunal was the interested party in this case and he is the registered owner of the land parcel Nakuru/Rare/Bagaria/1297. He presented a dispute over his boundary with the ex-parte applicant, the School Committee Bagaria Primary School, who own the land parcel Nakuru/Rare/Bagaria/1134. The dispute was heard before the Tribunal and the Tribunal was of the view that the School had encroached into the interested party's land. The award was filed and adopted as the judgment of the Court by the Molo Senior Resident Magistrate's Court. A decree was thereafter issued on 12 July 2011. There was also issued an order on 26 July 2011 for government survey. On 10 August 2011, the School Committee, filed this judicial review motion, seeking to quash the award of the Tribunal and subsequent decree.

4. The complaint in this application is that on 7 April 2016, there was entry into the suit premises on directions issued by the headmaster and the School Committee, and that the trees of the interested party were cut down and a fence put up. It is contended that this has flouted the decree and orders of the Molo Court. That is the reason the interested party wishes to have the respondents held in contempt. No response was filed to the application and only Mr. Kibet for the interested party/applicant appeared in court at the inter partes hearing of the motion.

5. I have considered the application but I am unable to allow it. For starters, the orders said to have been flouted are said to be those issued by the Molo Senior Resident Magistrate, which orders led to the issuance of the decree. I note however, that these orders were stayed when leave was granted to the School Committee to commence this judicial review motion on 10 August 2011. I don't think it can be argued that one has flouted orders that have been suspended.

6. Secondly, I do not think that this is the proper forum to argue such application. The suit herein is a judicial review motion. If the interested party wishes to have the ex-parte applicant cited for contempt on an order, not issued in this suit, but in another suit, then it is best to file a separate stand alone application for the same to be considered, or to argue the question of contempt in the court that issued the order. The order complained of was never issued by this court and not in this suit, and it is in my view, improper to have such application heard within this suit.

7. Thirdly, and I say this without prejudice to any contrary finding that I or other court may make upon being presented with a proper application, I have actually not seen any order that has been flouted. The order annexed by the interested party simply says "that a Government Surveyor to straighten the disputed boundary." Now, if the ex-parte applicant has cut down trees belonging to the interested party and has put up a fence, I wonder how it can be said that the same is akin to flouting the order requiring a Government Surveyor to straighten a disputed boundary.

8. For the above reasons, I am not persuaded as to the merits of this application and it is hereby dismissed. I however make no orders as to costs.

Dated, signed and delivered in open court at Nakuru this 13th day of October 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of : -

Ms. Gitau holding brief for Mr. Kahigah for applicant.

N/A for respondents

Court Assistant : Janet

MUNYAO SILA

JUDGE

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