



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO.100 OF 2014

PHILIP CHILUMO MBARU (*suing as the legal administrator and ad litem of the estate of*
BAYA NDALE BAYA.....PLAINTIFF

=VERSUS=

- 1. DZOMBO CHARLES CHAI**
- 2. RAMA CHARLES CHAI**
- 3. JUMA CHARLES CHAI**
- 4. MATANO CHARLES CHAI**
- 5. KITI CHARLES CHAI.....DEFENDANTS**

R U L I N G

Introduction:

1. The Application dated 28th November 2014 by the Plaintiff is seeking for the following orders:-

- (a) The Defendants/Respondents be committed to Shimo la Tewa Prison for period of upto six (6) months for contempt of Court Order of 6th November 2014 emanating from Ruling delivered on 31st October 2014 by this Honourable Court.**
- (b) Costs of this Application be borne by the Respondents.**

The Applicant's case:

2. The Application is premised on the affidavit of the Plaintiff who deponed that on 10th November 2014, he accompanied one Michael Otieno who is a court process server with instructions to serve on the Defendants and the OCS Kilifi police station with the order dated 6th November 2014. It is the deposition of the Applicant that the process-server served the OCS and the 1st Defendant with the said order.

3. It is the Applicant's deposition that todate, the, the Defendants have totally ignored, failed and or refused to exhume the remains of the deceased from the suit property as per the orders of the court.

The Respondents' case:

4. In the Replying Affidavit, the 3rd Respondent has deponed that parcel of land number Chonyi/Galanema/37 is community land; that they have occupied the said land for over 50 years and that they do not have any means of exhuming the body of the deceased neither do they know where else to bury the deceased.

5. According to the 3rd Defendant, the deceased is already dead and it will be inappropriate to exhume him because the land has not been interfered with and that before the body is exhumed, a new burial site should be availed.

6. The Applicant's submissions were not on record at the time of writing this Ruling.

Submissions:

7. The Defendants' advocate submitted that the order of the court clearly stated that the Officer Commanding Station in charge of Chasimba Division and the Public Officer were to enforce the order; that the said officers were never served with the order of the court and that the Defendants role was to provide the cost of exhuming the body as well as the morgue.

Analysis and findings:

8. The Ruling of this Court of 12th June, 2014 arose from the Plaintiff's Application in which he sought for the committal of the Defendants to jail for disobeying an order of this court.

9. After hearing the Application, the court found the Defendants guilty of disobeying an injunction order. However, the court proceeded to order the Defendants to exhume the body of their father who had been buried contrary to an order of the Court.

10. The Defendants have not denied that they were not served with the order of 12th June 2014. Instead, they have stated that the order was never served on the OCS in charge of Chasimba Division and the Public Health Officer.

11. The Defendants have further deponed that in any event, they have no land on which to rebury the body of their late father and that the burial has not prejudiced the Plaintiff in any way.

12. The process-server, Michael Otieno, filed an affidavit of service in which he deponed that on 10th November 2014, he served on the OCS, Kilifi police station, with the order of 6th November 2014. On the same day, he visited the Defendants' home in the company of the Chief and served the 1st Defendant with the court order which he accepted on his own behalf and on behalf of the other Defendants, who are his brothers.

13. The Applicant has deponed that on 17th November 2014, he visited the suit property in the company of an Inspector of Police from Kilifi Police Station and found the 1st Defendant who was unwilling to exhume the body.

14. The order of this court was clear that the body of Charles Dzombo was to be exhumed by the Defendants. The OCS in charge of Chasimba and the Public Health Officer were only supposed to supervise the said exhumation.

15. The Defendants in this matter have not complied with that Order. In fact, the Defendants have not stated that they ever requested the Public Health Officer to supervise the said exhumation.

16. The Replying Affidavit of the 1st Defendant is a demonstration of a litigant who is not willing to obey the orders of the court. Indeed, the depositions in the affidavit are challenging the decision of the court.

17. It has been held time and again that court orders must be obeyed however unpleasant they are.

18. Considering that the Defendants have declined to exhume the body of their father and take it to the morgue as directed by the court on 12th June 2014, I find and hold that the Defendants, jointly and severally, are in contempt of the order of the court.

19. In the circumstances, I make the following order;

Warrants of arrest be and are hereby issued directed to the OCS Kilifi Police station to arrest Dzombo Charles Chai, Rama Charles Chai, Juma Charles Chai, Matano Charles Chai and Kiti Charles Chai and to bring them to this court to show cause why they should not be punished for disobeying the order of the court.

Dated and delivered in Malindi this 26th day of June, 2015.

O. A. Angote

Judge