



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 46 OF 2013

AFRICAN INLAND CHURCH KENYA

(TRUSTEES REGISTERED.....PLAINTIFF/APPLICANT

VERSUS

NAOMI ENYANG.....1ST DEFENDANT

AMIN ALI MOHAMED.....2ND DEFENDANT/RESPONDENT

R U L I N G

1. The applicant filed a Notice of Motion dated 3/6/2015 in which it seeks to have the second respondent committed to jail for a period not exceeding six months for disobedience of a court order. The applicant contends that on 26/2/2015 a consent order was recorded in which the parties herein agreed to maintain the status quo until the hearing and determination of the suit herein. The status quo was that there was to be no further construction going on on the disputed land until the dispute is heard and determined by the court.
2. The deponent of the supporting affidavit of the applicant's application contends that on 1/6/2015 he was at Nakuluja Academy together with the head teacher and some pupils. They were on a clean up exercise which involved part of the disputed plot when the respondent came in company of hired goons and started throwing stones into the compound of the school. He also witnessed a lorry deliver sand into the disputed plot and that there was actually construction which was going on. He sought intervention of the OCPD Turkana Central but that there was no assistance forthcoming. The applicant therefore contends that the respondent is in contempt of the court order and should be punished accordingly.
3. The respondent has opposed the applicant's application through a replying affidavit sworn 23/6/2015 and filed in court on the same day. The respondent denies disobeying any court order. He contends that the photographs which the applicant has annexed to its affidavit do not show any workers on the alleged construction site and that the photographs show an old wall and old buildings. He also contends that the photographs do not indicate when they were taken.
4. The respondent further contends that on 1/6/2015 Reverend David Nakain Arika an agent of the applicant brought in four workers and teachers of the applicant who demolished a fence between the applicant's plot and the disputed plot. The incident was reported to Lodwar police station where those who were involved in the demolition and razing down of the fence recorded statements. He depones that Reverend Nakain is being sought to record a statement over the incident and that this application is meant to cover up what the Reverend and his people did on 1/6/2015.

5. Before I move on to decide whether there was disobedience of a court order being complained of, a brief background resulting to the said order is necessary. The applicant had filed a suit against one Naomi Enyang on 23/4/2013 in which it sought a declaration that it is the lawful allottee of **Plot Number Nawoitorong/Nakuluja/304”B”**. It also sought an order of eviction of Naomi Enyang from the said plot as well as a permanent injunction restraining her or her agents from interfering with the applicant's enjoyment of the property.
6. The suit against Naomi Enyang took off. The plaintiff testified and closed its case on 2/4/2014. The case was adjourned for defence hearing. Before the defendant could offer her defence, the applicant filed an application for injunction on 4/2/2015 seeking to restrain Naomi Enyang and anyone claiming through her from interfering in any manner with the disputed land. The court granted an order of maintenance of status quo ordering that no construction should go on until the application was heard inter-partes
7. It would appear that the applicant extracted the order of court and served the same upon Naomi Enyang and the present respondent who was not party to the suit. This prompted the respondent herein to file an application seeking to be joined in this suit as second defendant. On 26/2/2015 a consent was entered by the advocate for the applicant and respondent in application of 4/2/2015 and the respondent herein who was seeking to be enjoined as a defendant in this case. The consent is the one which bound the parties to that suit as well as the respondent who was yet to become a defendant in the suit not to carry on with any construction. This consent was to apply to **ELC No. 5 of 2015**. The present respondent was allowed to join the suit as defendant vide a consent recorded on 5/3/2015. ELC No.5 of 2015 was also consolidated with this suit through that consent.
8. It is important to note that before the consent of 26/2/2015 was entered into, the respondent in this application had already fenced the disputed land with corrugated iron sheets and put up a gate. This is as per the photographs annexed to the supporting affidavit of 4/2/2015. If the respondent is to be found guilty of contempt of court, the applicant has to demonstrate that the respondent went on to carry on further construction work besides what he had done before the court stopped any further constructions.
9. The applicant has annexed some photographs showing a heap of ballast and some two empty bags of cement lying on the ground. There is also a water pipe lying on the ground. Besides this, there is nothing to show that there is any construction going on. There is no wall or building coming up. The two empty bags of cement seem to have been used sometime ago. There is clearly no evidence of any construction going on. The applicant contends that there was construction going on on on 1/6/2015. If there was any construction going on at least he should have taken photographs of workers on site or the construction itself. One cannot take photographs of two used empty bags of cement and claim that that is construction going on.
10. On the day the applicant claims that there was construction going on, there is evidence that the applicant's agents were on the ground demolishing a fence between the school and disputed plot. This incident was reported to Lodwar police and the persons involved in the demolition of the fence recorded statements. The applicant's agent Reverend Nakain has sworn an affidavit in which he states that on that day, they were cleaning the school compound including part of the disputed land not occupied by the respondent. He had no business interfering with the status quo under the guise of cleaning. The applicant's agents are not being candid with the truth. They demolished the fence and after the respondent reported them to police, they came to court to file this application as a cover up. There is no construction going on at the disputed plot. I find no merit in this application. The same is hereby dismissed with costs to the second respondent Amin Ali Mohammed.

It is so ordered.

Dated, signed and delivered at Kitale on this **28th** day of **July, 2015**.

E. OBAGA

JUDGE

28/7/2015

In the presence of M/s. Arunga for Mr. Barongo for Defendant/Respondent and M/s. Bett for Mr. Samba for Plaintiff/Applicant.

Court Assistant – Winnie.

E. OBAGA

JUDGE

28/7/2015