



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 53 OF 2015

PIRY JOHNSTONE MUYE.....PLAINTIFF

VERSUS

SHARIF OMAR MOHAMED.....DEFENDANT

R U L I N G

Introduction:

1. What is before me is the Plaintiff's Application dated 14th April 2015 seeking for the following orders:-
 - (a) That the Defendant herein SHARIF OMAR MOHAMED be arrested and committed to prison for a period of six (6) months for disobeying the Orders issued by this Honourable Court on 8th April 2015.
 - (b) That this Honourable Court be pleased to make any other or such further orders as it may deem fit and just to grant.
 - (c) That costs of this Application be provided for.
2. The Application is premised on the ground that on 8th April 2015, the court issued injunctive orders against the Defendant restraining him from carrying out any further construction work on plot number 7733/III/MN; that the Defendant was served with the order and that the Defendant has flagrantly disobeyed the said order.
3. In his reply, the Respondent deponed that he has never been served with the orders of the court; that he is not the owner of L.R No. 7733/III/MN and that he is not carrying out any construction on the said land.
4. According to the Defendant, he is not even aware where the suit property is situated.
5. I have considered the submissions and authorities on record.
6. The Defendant has denied that he owns or has any interests in the suit property.
7. The Affidavit of Service annexed on the Plaintiff's Application shows that the order of this court issued on 8th April 2015 ex-parte was served on Mr. Noor who was on the suit property.
8. According to the said affidavit, Mr. Noor informed the process-server that he was the construction manager.
9. Considering that the order of injunction was issued ex-parte, it was incumbent on the process-server to personally serve the Defendant with the order of the court. Having served a Mr. Noor,

this court finds that the service was not proper, not just for the purpose of the Application for contempt but the entire case.

10. The Defendant has also denied that he is the one who has authorized the construction of the building on the suit property. Indeed, the Defendant's claim is that he does not have any interest in the property. According to him, he does not even know where the suit property is situated. Consequently, he cannot stop the ongoing construction.
11. Did the Plaintiff sue the wrong person? It will be important for the Plaintiff to carry out more investigations to ascertain the person who has authorised the construction of the building in question on the suit property.
12. In the absence of evidence that the Defendant was personally served with the order of this court, and considering that the Defendant has denied that he has an interest in the suit property, I dismiss the Application dated 8th April 2015 with costs.

Dated and delivered in Malindi this 3rd day of **July** 2015.

O. A. Angote

Judge