



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
ELC. CASE NO. 992 OF 2013

JOHN DANIEL MUIYURO.....PLAINTIFF

VERSUS

NICODEMUS MIGIRO.....DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 4th August 2014 in which the Plaintiff/Applicant seeks for orders that the Defendant's property be attached and the Defendant be detained for a term not exceeding six (6) months for disobeying the honorable court orders issued on 22nd July 2014 and served upon the Defendant on 30th July 2014 and further that the costs of this Application be provided for.

The Application is premised on the grounds appearing on the face of it together with the Supporting Affidavit of the Plaintiff/Applicant, John Daniel Muiyuro, sworn on 4th August 2014 in which he averred that on 18th July 2014, this honorable court granted injunctive orders restraining the Defendant from inter-alia developing any further upon the suit property pending the hearing and determination of this suit. He stated further that the said order was issued on 22nd July 2014 and served upon the Defendant personally on 30th July 2014. An Affidavit of Service was annexed. He further averred that the Defendant knowingly and willingly ignored the injunctive orders and continued with the construction on the suit property. Photographs in support of this assertion were annexed. He concluded by stating that the Defendant has completely breached the injunctive orders granted on 18th July 2014 and has held this honorable court in contempt and is therefore liable to be committed to civil jail.

The Application is contested. The Defendant, Nicodemus Migiro, filed his Replying Affidavit sworn on 3rd September 2014 in which he averred that he did not continue constructing on the suit property after being served with this court's order dated 22nd July 2014. He further averred that the Plaintiff is trying by all means to obtain ownership of the suit property that is the subject of this suit and that the photos annexed were taken on different dates in order to justify the Plaintiff/Applicant's false averments that he is a contemnor.

In response thereto, the Plaintiff/Applicant filed his Supplementary Affidavit sworn on 23rd September 2014 in which he averred that the Defendant was served with the court order on 30th July 2014 and thereafter continued with construction. He added that the Defendant's agents and /or tenants then took

occupation of the suit property and are using the same as a church premises. He clarified that the said occupation took place and has been going on even during the pendency of contempt proceedings. He confirmed that the Defendant has leased out the suit property to Faith Life C.H. Church.

Both parties filed their written submissions.

It is true that upon hearing the Plaintiff/Applicant's Notice of Motion dated 14th August 2013, this court proceeded to issue an order of temporary injunction restraining the Defendant/Respondent from entering, selling, transferring, trespassing, alienating and/or developing any further the parcel of land known as Plot No. A1 617 Kayole Infills, herein referred to as the suit property. This temporary injunction was to last up until the hearing and determination of this suit. To date, this suit is still pending hearing and determination so the temporary injunction therefore remains in force. The Plaintiff/Applicant stated that the Defendant/Respondent was served with the court order on 30th July 2014. The Defendant/Respondent does not dispute having been served with the court order but maintains that he has not in any way disobeyed the court order. The Plaintiff/Applicant on his part maintains that the structure on the suit property had not been roofed by the time he served the Defendant/Respondent with the court order but avers that the Defendant/Respondent proceeded to roof the structure on the suit property and to lease the same out to a church going by the name Faith Life C.H. Church in contravention of the court order. The Defendant/Respondent denies that.

Section 63(c) of the Civil Procedure Act, 2010 provides that,

“In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold”.

Further, it is provided under **Order 40 Rule 3(1) of the Civil Procedure Rules, 2010** that,

“3(1) In case of disobedience, or breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release”

The Court of Appeal in **Refrigeration and Kitchen Equipment Utensils Ltd vs Shah & Others 1990 LLR 294 (CAK)** held that,

“It is Essential for the maintenance of the rule of law and good order that the authority and the dignity of the court are upheld at all times. Therefore the court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors”.

Did the Defendant/Respondent disobey this court's injunctive orders as alleged by the Plaintiff/Applicant? The photos annexed to the Plaintiff's Supporting Affidavit dated 21st June 2014 show the structure of a building on the suit property which is incomplete and particularly which shows that the roofing, windows and main door of the structure was not completed. However, a photo of the same structure dated 4th August 2014 annexed to the Plaintiff/Applicant's Supporting Affidavit shows the roofing complete together with two metal windows and a metal door also fixed to the structure. Further, the building bears a sign board with the words “Faith Life C.H. Church”, lending credence to the Plaintiff/Applicant's assertion that the structure was leased out to a church. In his response, the Defendant/Respondent has at best merely denied the Plaintiff's allegations but has not explained the obvious activity that proceeded at the suit property after he was served with this court's order restraining him from further developing the structure on the suit property. On my part, I am convinced that the Defendant/Respondent did in fact proceed to further develop the suit property in blatant disregard of this court's injunctive orders served upon him. I therefore find the Defendant guilty of contempt of court and do hereby direct that he be committed in civil jail for a term of 1 month from the date of his arrest. A warrant of arrest to issue. Costs shall be borne by the Defendant.

It is so ordered.

DELIVERED AND SIGNED AT NAIROBI THIS 25TH DAY OF SEPTEMBER 2015.

MARY M. GITUMBI

JUDGE