



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 39 OF 2012

GRACE KHISA MALENYA.....PLAINTIFF/RESPONDENT

VERSUS

JANE KILIMO.....DEFENDANT/APPLICANT

R U L I N G

1. The defendant/applicant filed a notice of motion dated **6/7/2015** in which she seeks committal of the plaintiff/respondent to civil jail for disobedience of a court order. The applicant contends that the respondent had filed a notice of motion seeking an injunction restraining her from interfering with **LR. No. Trans-Nzoia/Mito Mbili/96**.
2. When the respondent's application came up before the judge on **8/5/2012**, the judge ordered that the parties maintain status quo. The applicant's lawyers extracted an order issued on **10/5/2012** and served the same upon the respondent. The extracted order had a penal notice on it.
3. The applicant contends that the orders were subsequently extended in the presence of the respondent but that notwithstanding, the respondent has gone ahead to disobey the orders of the court by interfering with the applicant's portion of land. The respondent has destroyed a semi permanent house standing on the applicant's portion of land and ploughed her portion. It is on this basis that the applicant seeks to have the respondent committed to civil jail for a period not exceeding six months.
4. The applicant's application is opposed based on replying affidavit of the respondent sworn on **22/9/2015**. The respondent contends that the applicant's application is fatally defective. That she has never been served with any order and that she is not aware of any order which she has defied. She denies that she was ever served with the order requiring her to maintain the status quo.
5. The respondent further contends that she has been in possession of the suit land and that the applicant has never been in possession of the same. That the status quo referred to in the order meant that she was to continue remaining on the land. The status quo has never changed to date. The respondent takes issue with the applicant for not disclosing the date on which she is alleged to have disobeyed the court order.
6. I have carefully gone through the applicant's application as well as the opposition to the same by the respondent. This being an application for contempt of court, the court must be satisfied that firstly there was a court order which was given; secondly that the order was extracted and that it contained a penal notice warning of consequences in case of failure to observe the same; thirdly that the order was personally served upon the contemnor; fourthly that the order sufficiently showed what the contemnor was expected to do and fifthly that there was disobedience of the order.

7. In the instant case, there is no evidence that the order alleged to have been disobeyed was served upon the contemnor. The order which is annexed to the applicant's application simply says that “*status quo to be maintained*”. It does not describe what the status quo was and as such even if it were served upon the contemnor, it will be hard to know what was to be maintained.

8. Despite the above deficiencies, I have tried to figure out if there was any contempt committed by the respondent. The respondent had filed a suit against the applicant on **19/3/2012** in which she sought an order of eviction and permanent injunction against the applicant from **LR. No. Trans-Nzoia/Mito Mbili/96** which is about **10 acres**. On **11/4/2012**, the respondent filed a notice of motion under certificate of urgency in which she sought injunction orders seeking to restrain the applicant from interfering with **LR. No. Trans-Nzoia/Mito Mbili/96** until hearing of the application inter-partes and thereafter determination of the main suit.

9. The application was placed before Justice Karanja on **19/4/2012** who certified the same urgent and granted interim orders in terms of **prayer (2)** of the motion which sought to restrain the applicant by herself, her agents, servants or by any person acting under her authority from trespassing onto, fencing off, cultivating, ploughing, leasing or in any other manner interfering with the plaintiff's quiet possession and occupation of **LR. No. Trans-Nzoia/Mito Mbili/96** measuring **4.5 hectares**. The application was then set down for inter-partes hearing on **8/5/2012**.]

10. On **8/5/2012** the application was adjourned to **27/6/2012** for hearing. In the meantime, the judge ordered that status quo be maintained. It is important to note that the status quo to be maintained was not explained. The respondent had claimed in the application that the applicant had taken advantage of the post election violence of 2007-2008 to invade the suit land and started cultivating the same. She alleged that the applicant was cultivating it ready for planting. This is what she wanted the applicant to be stopped from doing.

11. In my understanding, the issuance of a temporary injunction by the judge on **19/4/2012** meant that the applicant had been stopped from planting and any further interference with the suit land. When the judge ordered that the status quo be maintained it meant that the position which was obtaining i.e. the applicant not interfering with the suit land was to be maintained. My understanding of the status quo is fortified by the applicant's subsequent plea to court to define the status quo. The applicant's lawyers wanted the status quo to be defined to mean that the applicant occupies 3 acres and the respondent 7 acres. This plea was made on **10/12/2014**. Again on **26/3/2015** the applicant's lawyer asked the court to clarify the issue of status quo. It is on this date that the respondent's advocate stated that the respondent was occupying 7 acres and the applicant 3 acres. The respondent's lawyer asked the court not to interfere with the status quo.

12. It is therefore clear that the status quo as at **8/5/2012** was not defined. The respondent cannot therefore be punished when what she was supposed not to do was not defined. In the case of ***Ochino & Another -vs- Okombo & 4 Others, Civil of Appeal No.36 of 1989***, the Court of Appeal Judges in dealing with a similar situation where the High Court had jailed a contemnor for disobeying an order maintaining the status quo which had not been described held that the court will only punish as a contempt a breach of injunction if it is satisfied that the terms of the injunction are clear and unambiguous.

13. In the present case, the terms of the injunction were not clear as the parties were only asked to maintain status quo. The status quo obtaining was not explained or specified. It is the parties who tried to have the same clarified much later. It therefore follows that the respondent cannot be punished for what was not clearly defined and in any case she was not served with any order asking her not to do particular acts. Even when the advocates sought to clarify the status quo, no order was extracted and served upon the respondent requiring her to refrain from doing certain acts. I therefore find that the applicant's application lacks merit. The same is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this **22nd** day of **October, 2015**.

E. OBAGA

JUDGE

In the presence of Mr. Too for Mr. Aseso for Defendant/Applicant and M/S Munialo for Plaintiff/Respondent.

Court Assistant – Winnie.

E. OBAGA

JUDGE

22/10/15