



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYAHURURU

E.L.C. NO. 51 OF 2019

MIRIAM NYAMBURA MWENJA.....1ST PLAINTIFF

FLORA MUTHONI MWENJA

(suing as the legal representative of the estate of MWENJA NGURE

alias EZKIEL NGURE alias EZEKIEL MWENJA NGURE).....2ND PLAINTIFF

VERSUS

SUSAN MURINGI WACHIRA.....DEFENDANT

RULING

A. THE PLAINTIFF'S APPLICATION

1. By a notice of motion dated 29th May, 2020 expressed to be brought under **Sections 1A, 1B, 3A and 63 of the Civil Procedure Act (Cap. 21), Order 40 Rule 3 of the Civil Procedure Rules (the Rules) and any other enabling provisions of the law**, the Plaintiffs sought an order for the Defendant, Susan Muringi Wachira, to be cited for contempt of court and jailed for a period of six (6) months without the option of a fine.

2. The said application was based upon the grounds set out on the face of the application and the contents of the supporting affidavit sworn by the 1st Plaintiff, Miriam Nyambura Mwenja, on 29th May, 2020 and the annexures thereto. The Plaintiffs contended that the Defendant had violated the *status quo* orders made on 6th May, 2020 with respect to the suit properties and that she had further disobeyed an interim injunction which restrained her from leasing out or in any way interfering with the suit properties to wit, *LR. No. 6585/185, 6585/197 & 6585/268*. It was contended that the Defendant had issued a notice to tenants occupying one of the suit properties to pay rent to her advocates.

B. THE DEFENDANT'S RESPONSE

3. The Defendant filed a replying affidavit sworn on 10th July, 2020 in opposition to the said application. She disputed that she had disobeyed or violated the *status quo* or injunction orders made on 6th May, 2020. She contended that the ex-parte *status quo* orders in favour of the Plaintiffs were vacated on 6th May, 2020 and that a new *status quo* order was made in her favour on 6th May, 2020 allowing her to continue in possession of the suit properties. The Defendant further contended that the *status quo* order of 6th May, 2020 meant that she was to collect rent as before. She further stated that the rental income from the suit property was her only source of livelihood and that was the reason why her grandfather gifted her the suit properties.

C. DIRECTIONS ON SUBMISSIONS

4. It was directed that the said application shall be canvassed through written submissions. The record shows that whereas the Defendant's submissions were filed on 5th October, 2020 the Plaintiffs' submissions were not on record by the time of preparation of the ruling.

D. THE QUESTION FOR DETERMINATION

5. The court has considered the Plaintiffs' notice of motion dated 29th May, 2020 together with the supporting affidavit and annexures thereto. The court has also considered the Defendant's replying affidavit and the submissions on record. The court is of the opinion that the main question for consideration is whether or not the Plaintiffs have demonstrated that the Defendant has violated the court orders made on 6th May, 2020.

E. ANALYSIS AND DETERMINATION

6. It has been held that a charge of contempt of court is a serious matter and that contempt of court proceedings are *quasi-criminal* in nature. Consequently, the standard of proof in such proceedings is higher than the balance of probabilities in civil cases although not as high as beyond reasonable doubt. See **Ochino & Another v Okombo & 4 Others [1989] KLR 165.**

7. It has also been held that before a person can be punished for contempt of court the court must be satisfied that the court order alleged to have been disobeyed was clear and unequivocal in its terms. It must not be ambiguous or susceptible to multiple interpretations to a reasonable person. In the case of **Ochino & Another v Okombo & 4 Others (supra)** the Court of Appeal quoted the following passage from the case of **Mwangi Mang'onde v Nairobi City Commission, Civil Appeal No. 95 of 1998:**

“The requirement is important because the court will only punish as a contempt a breach of injunction if satisfied that the terms of the injunction are clear and unambiguous, that the Defendant had proper notice of the terms and that breach of the injunction has been proved beyond reasonable doubt.”

8. The court has considered the *status quo* and injunction orders made on 6th May, 2020. The court appears to have made 7 distinct orders on 6th May, 2020 but only the first 2 orders appear to be in contention. Those two orders stated as follows:

“1. THAT parties shall maintain *status quo* as granting the orders sought would lead to the eviction of the Respondent which is premature at this stage.

2. THAT pending the hearing and determination of the suit, the Respondent is hereby enjoined by herself, her children, her agents, and or employees from leasing out, and or in any other way interfering with LR. No. 6585/185, 6885/185, 6885/268 in a manner that would lead to its alienation and or depreciation.” (underlining added)

9. Whereas the Plaintiffs contended that the Defendant's action of demanding rent from tenants violated either or both of the said orders, the Defendant contended that there was no such violation and that, in fact, the *status quo* orders were granted in her favour hence she was entitled to demand the rent.

10. The court is of the opinion that the *status quo* order as framed was subject to more than one interpretation since the existing factual circumstances were not captured in the court order. The court is of the opinion that the *status quo* order was not unequivocal in the circumstances of the dispute before court.

11. The court is not satisfied that the Defendant's action of demanding rent was in violation of the interim injunction as framed in **Order No. 2**. It was not demonstrated by the Plaintiffs that the Defendant's demand for rent was an action which could lead to *alienation or depreciation* of the suit properties. It was not demonstrated in what matter the Defendant's demand “interfered” with the suit properties. The court is thus not satisfied that the Defendant's demand letter was a violation of the interim orders made on 6th May, 2020.

F. CONCLUSION AND DISPOSAL

12. The upshot of the foregoing is that the court is not satisfied that the contempt alleged on the part of the Defendant has been proved to the required standard or at all. Consequently, the court finds not merit in the Plaintiffs' notice of motion dated 29th May, 2020 and the same is hereby dismissed. Costs shall be in the cause.

It is so ordered.

RULING DATED and SIGNED at NYAHURURU and **DELIVERED** via Microsoft Teams Platform this 4th of **February, 2021**.

In the presence of:

Ms. Wanjiru Muriithi for the Plaintiffs

Mr. Mahugu holding brief for Mr. Wakiaga for the Defendant

Court Assistant - Carol

Y.M. ANGIMA

JUDGE

04.02.2021



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