



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**SUCCESSION CAUSE NO.38 OF 2018**

**IN THE MATTER OF THE ESTATE OF CHRISTOPHER KIPCHIRCHIR - DECEASED**

**KENNETH KIPROP SUM.....PETITIONER**

**VERSUS**

**VERONICA CHEPSAT SUM.....OBJECTOR/ APPLICANT**

**RULING**

1. By an application dated 26/02/2021 supported by the affidavit sworn by **VERONICA CHEPSAT SUM**, (who is also the applicant) seeks:

1. spent.

2. **THAT the order made by the Court on 24/3/2021 ordering the maintenance of the prevailing status quo while pending the determination of the contempt application dated 3/2/2021, be substituted with an order restraining the respondent from re-ploughing or in any other manner dealing with L.R. No. 2226 Moiben, while awaiting the determination of the said contempt application.**

3. **THAT while pending the hearing and determination of this application, the Honourable Court be pleased to restrain the respondent, from re-ploughing and planting crops on L.R. No. 2226 Moiben.**

4. **THAT the County Commandant Uasin Gishu County be directed to ensure that the Orders made by this Honourable Court arc complied with.**

2. The Objector prays that this Court punishes the **KENNETH KIPROP SUM** Petitioner/Respondent for contempt in relation to the orders made by this court on 20/11/2020 and on 24/7/2020 by ordering his committal to prison for a term of six (6) months.

The background to the events leading to this application is that on 24/7/2020 the court issued orders that:

1. Conservatory orders do issue barring the petitioner/respondent, his agents, servants, employees or any other person claiming through him, from ploughing, leasing, sub-leasing, subdividing, selling or in any other manner dealing with parcel No 2226 pending hearing interpartes of the application dated 9<sup>th</sup> June 2020.

2. The OCS Moiben was directed to supervise and ensure enforcement of the order.

3. The respondent sought variation of the order as there were crops in the field which were subjected to waste, and n 20/11/2020 this court authorized the Petitioner/Respondent to proceed to LR **No.2226 Moiben** and harvest and save the crops on the land to prevent them from being damaged. The court further ordered that all the harvested crops be secured in the store within the farm until the matter is heard and determined.

4. The Objector was not aware of the court date of 20/11/2020 which was order was made at the instance of the petitioner, but she nonetheless complied with the extracted order that the petitioner came with to the farm and allowed the harvesting and shelling of the maize and wheat, millet and potatoes.

5. It is stated that the Petitioner/Respondent had only planted about 50 acres of maize, 60 acres of wheat and an acre of millet, but he went ahead and harvested not less than 1000 bags of shelled maize, he also harvested about 60 acres of wheat, an acre or so of millet, and 30 acres of Potatoes.

6. It is the applicant's contention that, in blatant disregard to the said court order, the Petitioner/Respondent in deliberate disobedience of the court order did not store the crop in the farm store as had been directed, but carted it away to an unknown destination. The applicant points out that the harvesting and taking away of the harvested crops is not denied in the petitioner's Replying Affidavit saying all the harvested crops from the farm were ferried away to an unknown destination using a huge Mercedes **Benz**, Lorry and tractors pulling trailers between 2/12/2020 and 5/12/2020.

7. According to the objector, the 1000 bags of shelled maize are worth about Kshs. 3,000,000/-, and the approximately 1200 bags of wheat are worth about Kshs. 3,600,000/-, and that the 17 bags of millet would have a value of about 100,000/- and that an acre of potatoes can yield 50 bags of 50Kg, and the value of the potatoes would be about 4.5 Million. The cumulative value of harvested crops is given as about Kshs.11.2 Million.

8. It is for this reason that the Objector prays that the petitioner be ordered to purge the contempt by returning to the farm all the crop he harvested and took away or in the alternative he be ordered to deposit the reasonable value thereof in court before being given audience.

9. In addition, despite the existence of the orders issued on 24/7/2020 the applicant laments that the Petitioner again wilfully, deliberately and flagrantly disobeyed the and in January 2021 ploughed about 150 **acres' part of L.R No. 2226** and even planted crops therein despite knowing very well that the court order of 24/07/2020 barred such actions.

10. The Objector submits that it is the obligation of every person in respect of whom an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. That the uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void. The Petitioner's actions clearly undermined the dignity and authority of this Honourable court. It is pointed out that the Petitioner is not a stranger to the pending applications and the orders made in this matter and he cannot blame the Objector's change of Advocate for his misactions. This court is urged not to condone such deliberate disobedience of its orders or shy away from its responsibility to deal firmly with proved contemnors such as the Petitioner in this case.

11. That the Applicant has established that the Petitioner's actions were indeed contemptuous and he should face the repercussions of his misactions. In support of this submission reference is made to the case of **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR** in addressing the question whether the applicants have established any basis for the orders sought to be granted noted; That if courts are to perform their duties and functions effectively and remain true to the spirit which they are sacredly entrusted with, the dignity and authority of the courts has to be respected and protected at all costs.

12. This court is urged not to allow any party to undermine its authority and by acts which tend to create disaffection and disrespect thus creating distrust in its working the edifice of the judicial system gets eroded.

13. The Objector submits that in the present situation, the disobedience is so wilful that, it is not necessary to first obtain leave before instituting contempt proceedings as was pointed out in the case of **Samuel M.N. Mweru & Others v National Land Commission & 2 others [2020] eKLR**. Further, that the Court in the **Mweru** (supra) case thus held that;

*"...no leave is required before bringing an application, like the one before s, for committal for contempt relating to breach of this court's order..." On that basis, I find that it was not necessary for the applicant to seek leave before filing this application, hence this application is properly before the court" (Para 29)*

14. Drawing from the equitable principle that **'He who comes to equity must come with clean hands'**, the objector maintains that the Petitioner's hands are unclean and marred with illegality having wilfully and deliberately disobeyed court orders. That he cannot be again seeking the same court to safeguard his interest yet he does not obey orders made by the same court.

15. This court is urged to be guided by the case of **PMB v OAO [2018] Eklr**, the court held as follows;

*"...the Respondent is found to be in contempt of the court order of 5 of October 2018 and deserves to be punished for the said contempt. Consequently, it is ordered that the said OAO shall pay a fine of Kshs Shillings Two Hundred Thousand to this Honourable Court and secondly, he shall be arrested and detained in custody until he complies with the said order." (Par. 10)*

16. The respondent contends that by 26/3/2021 he had already ploughed and planted on a portion of land earmarked for him by the objector/applicant. Meanwhile, on 24/3/2021 this court directed that **'status quo'** be maintained, yet at the time the position on the ground was that the petitioner and other beneficiaries had actually ploughed the land and planted, and the petitioner's counsel informed the Court as much. It is thus argued that, as it is now or at the time the application dated 26/3/2021 was filed the prevailing 'status quo' was that the petitioner had ploughed and planted.

17. The respondent seeks to explain the relationship between him and the Objector so as to help all involved see the actual point of contention and it arises in the following manner: The petitioner is the son of **Christopher Kipchirchir Sum** who is the son of **Ernest Kimng'etich Sum** (the owner of L.R. No. 2226, Moiben). **Veronica Chepsat Sum** is the wife of **Ernest Kimng'etich Sum (deceased)** and administrator of his estate. She is the grandmother of **Kenneth Kiprop Sum**, the petitioner -why and the question posed is why there should be a dispute between a grandmother and a grandson.

18. The applicant contends that the objector is simply acting maliciously against her own grandson, because by a grant issued and confirmed on 18/4/1988 in Eldoret **1 I.C.P. & A. No. 23 of 1985**, the applicant unilaterally apportioned **L.R. No. 2226** into several shares meant for the beneficiaries who included **Christopher Kipchirchir Sum** the first son (who unfortunately died) and the petitioner is now pursuing his cause, on his father's share of the land. The objector is accused of portraying him as a villain who is going against the law yet all the other beneficiaries have ploughed and planted on the land on their rightful shares but the objector wants to behave as if she has not noticed the ploughing and planting which has been done on the ground.

19. In support of the claims that the objector is propelled by malice, the applicant points out that, in **Eldoret H.C.P.& A. 268 of 2000** she applied for and obtained grant of Letters of administration over the estate of her late son **Christopher Kipchirchir Sum** (to whom this Cause relates) which was unknown to the petitioner until the objector disclosed this in one of the affidavits dated 21/10/2020 supporting an application dated 9/6/2020.

20. It is argued that the prayer sought in 2 and 3 of the motion dated 26/3/2021 have been overtaken by events since the land had already been ploughed at the time of filing the application.

**Good faith:** It is the respondent's submission that the ploughing and planting done by the petitioner is without any ill-motive or bad intentions, and is not meant to flout any Court order or directions given by the Court. It is the objector who is moving forth and back in Court for reasons best known to her. That changing of Counsels also comes with certain consequences such as non-disclosure of material facts.

**Loss or damage:** That the objector has no loss or damage to suffer if orders sought are not granted as she can utilize the land that is available.

21. It is submitted that in the other motion seeking to consolidation of the related causes in which all beneficiaries are going to be brought on board, there will be ultimately sub-division of the entire land with each beneficiary getting their rightful shares and the matter will be concluded.

#### **ANALYSIS AND DETERMINATION**

22. **Section 5 of the Judicature Act** and which gives the High Court power to punish for contempt of court in order to uphold the authority and dignity of courts. **Section 47 of the Law of Succession Act** provides that the High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient while **Rule 73 of the Probate and Administration Rules** provides that inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

23. What is so apparent in this matter is that these are two family members who are out to flex their muscles and demonstrate just who calls the shot. Unfortunately, they may not realize it but unwittingly the show of might simply means that this matter delays conclusion and delays any productive use of the land. This matter has been fraught with multiple applications and counter applications, with a dizzying effect.

24. The moral/social wars and rationale as to why a grandmother and a grandchild should be fighting over property left by the deceased is not the main issue at the moment. Indeed, if the parties were so minded about preserving such social ties, then they have the option of exploring court annexed mediation. I will not take a trip on a merry-go round, the orders of 24/07/2020 are clear and even if by the date they were issued, matters on the ground were different, then the most appropriate thing was to come back to court and seek variation or setting aside or even stay. The respondent cannot ignore the orders and act like they are some mysterious writing on the wall akin to the times of King Nebuchadnezzar.

25. I take note that the respondent does not deny that the crop is not at the store as had been ordered, or that he in fact carted it away at his own discretion. Again he seems to prefer to do things his own way and not as directed by the court. I cannot think of a more affable or accommodating term to describe this kind of wilful disobedience other than the legal term, contempt of court. I therefore find that the respondent has been in contempt of court and order that a warrant of arrest do issue for his committal to civil jail for a period of 3 months.

The costs of this application shall be borne by the respondent

**E-DELIVERED AND DATED THIS 20<sup>TH</sup> MAY 2021**

**H.A. OMONDI**

**JUDGE**

**Mr. Kiarie for applicant**

**N/A for respondent at 9.25am**