



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT ELDORET**

**ENVIRONMENT & LAND CASE NO. 10 OF 2021**

**JOHN KIBEREN KISORIO.....PLAINTIFF**

**-VERSUS-**

**JONES M. LAGAT.....1<sup>ST</sup> DEFENDANT**

**MIKE K. SINGOEL.....2<sup>ND</sup> DEFENDANT**

**TIRONG'O K. ARAP TANUI.....3<sup>RD</sup> DEFENDANT**

**EZEKIEL K. ARAP MENGICH.....4<sup>TH</sup> DEFENDANT**

**RENSON K. MBWAGWA.....5<sup>TH</sup> DEFENDANT**

**RULING**

1. This is a Ruling in respect of two applications. The first application is dated 29<sup>th</sup> January, 2021. It is brought by the Plaintiff/Applicant, and it seeks the following orders:-

1) Spent

2) Spent

3) ***THAT*** this honourable court be pleased to issue a temporary injunction to restrain the Defendants/Respondents from entering, leasing, cultivating, subdividing, evicting the Plaintiffs, selling either by themselves, their agents, employees or any other person acting under their instructions and/or interfere with the peaceful and quiet enjoyment of land parcel **Eldoret Municipality Block 15/1760 measuring 1.997 Ha** pending hearing and determination of this suit.

4) ***THAT*** the OCS Yamumbi Police Station to oversee compliance.

5) ***THAT*** the costs of this application be provided for.

2. The second Application is dated 16<sup>th</sup> June, 2021. It is brought by the Plaintiff/Applicant and it seeks the following orders:-

1) Spent

2) ***THAT*** this Honourable court be pleased to issue a Notice to Show Cause against **JONES M. LAGAT, MIKE K. SING'OEI, TIRONG'O K. ARAP TANUI, EZEKIEL K. ARAP MENGICH and RENSON K. MBWAGWA, the Defendants;** to Show Cause why contempt of court proceedings should not be commenced against them, and why they should not be punished for contempt of court and/or blatant disobedience of this Honourable court's orders made by Honourable (Dr.) Lady Justice M. A. ODENY on the 4<sup>th</sup>, March, 2021.

3) ***THAT*** **JONES M. LAGAT, MIKE K. SING'OEI, TIRONG'O K. ARAP TANUI, EZEKIEL K. ARAP MENGICH and RENSON K. MBWAGWA, the Defendants** be held in contempt of court and be committed and/or detained for a period of 6 months and/or be compelled to pay a sum of Kshs. 300,000 for disobedience and/or breach of the court's order given on the 4<sup>th</sup>, March, 2021.

4) ***THAT*** the costs of this application be provided for.

## **The First Application**

3. In this application, the Applicant contends that he applied for allotment of a plot within Eldoret Municipality where he intended to put up a residential house. He was successful and was allotted Eldoret Municipality Block 15/1760 on 24<sup>th</sup> June, 1998 (suit property). He subsequently paid stand premium, rent and other charges as per the letter of allotment in the year 2016.

4. A lease in his favour was processed and registered on 31<sup>st</sup> August, 2016. A certificate of lease was issued in his favour on the same day. He put up a mud walled structure where he put a caretaker to take care of the suit property. On or about the 14<sup>th</sup> December, 2020, the 4<sup>th</sup> Defendant/Respondent went to the suit property and lied to his caretaker that he had been sent by the Applicant to go and put up a temporary structure on the suit property.

5. The Applicant contends that the Defendants/Respondents have threatened to evict him from the suit property and subdivide it among themselves. Despite the intervention of elders and report to police to investigate the matter, the Respondents have persisted in their unlawful actions.

6. The Respondents opposed the Applicant's application based on a replying affidavit sworn on 14<sup>th</sup> April, 2021. The Respondents contend that they were allotted the suit property by then unsurveyed on 27<sup>th</sup> February, 1991. They made an initial payment of Kshs 30,000 in November 1992.

7. The other monies as required in the letter of allotment was cleared in September 2019. In December 2020, the Respondents went to the suit property and put a temporary structure and accumulated building materials on the same. One of the Respondents Mike K. Sing'oei was summoned to Yamumbi Police Station where he recorded a statement. Before he went to Yamumbi Police Station, he passed through the suit property whereby he was confronted by the Applicant who was armed with a Panga. The Applicant claimed that he had ownership documents over the suit property.

8. The Respondents contend that they took possession of the suit property and have been cultivating on the same since 1991. They contend that the Applicant has threatened to harm them and that they have already recorded a statement at Yamumbi Police Station and registered a caution against the title to the suit property.

9. The Respondents further contend that the Director Land Administration in Nairobi has confirmed that the Applicant fraudulently registered the suit land in his name and that the fraudulent certificate of lease has since been restricted and the Applicant asked to surrender the same for cancellation.

10. In a further affidavit sworn by the Applicant on 2/3/2021, the Applicant contends that the Respondents did not pay the amount in their allotment within 30 days as required and that the suit property reverted back to the government which allotted it to him. He maintains that he is the one in possession through his caretaker and that the correspondence from the Ministry of Lands Nairobi and the County Government of Uasin Gishu were made following his filing of Judicial Review No 87 of 2018 in which he sued the Lands officials whereby the court compelled the Lands officials to give him approval for subdivision and quashed the officials' decision to reject his application for approval of subdivision of the suit property.

11. The parties were directed to file submissions within 14 days from 14/4/2021. As at the time of writing this ruling on 3/1/2022, no submissions had been filed and if any were filed, then the same are not in the file.

12. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondents. The only issue for determination is whether the Applicant has demonstrated that he has a prima facie case with a probability of success to warrant issuance of injunction.

13. There is no doubt that the suit property is currently registered in the name of the Applicant. I have examined the documents placed before the court regarding the suit property. The Applicant does not dispute the fact that the Respondent's letter of allotment was the first in time. What he contends is that the Respondents did not pay stand premium, rent and other charges within 30 days as required in the letter of allotment with the result that the suit property reverted to the government and was therefore lawfully allotted to him in 1998.

14. From the documents provided by the Respondents, it is clear that they paid Kshs 30,000 in or around November 1992. On 6/5/1996 the Respondents wrote to the Commissioner of Lands asking for extension of time to enable them to clear the outstanding amount. Though there was delay in clearing the outstanding amount, the Respondents nevertheless cleared the amount in 2019. The payment was accepted. There is no evidence that the allotment to the Respondents was ever cancelled. Indeed, there are correspondence from the Ministry of Lands in Nairobi that the documents held by the applicant may not have been obtained in a genuine way.

15. For one to be granted an injunction, he must demonstrate that he has a prima facie case with probability of success. From the documents placed before the court, the Applicant has failed to demonstrate that he has a prima facie case with probability of success.

16. The Respondents are the ones in possession and this is why the Applicant seeks for police assistance to evict them. The acreage of the land is known. If the Applicant finally succeeds in his claim, the land can be valued and he will be compensated in monetary terms.

17. Even if the court were to be in doubt which is not the case, the balance of convenience tilts in favour of the Respondents who are in possession and have prima facie shown that they were the first ones to be allotted the suit property. I therefore find no merit in the Applicant's application which is dismissed with costs to the Respondents.

It is so ordered.

## The Second Application

18. In this application, the Applicant contends that the court granted an order of maintenance of the status quo pending the hearing and determination of the Application dated 29<sup>th</sup> January, 2021. The order of maintenance of status quo was granted on 4<sup>th</sup> March, 2021.
19. According to the Applicant, the status on the ground as at 4<sup>th</sup> March, 2021 was that there was a mud walled house where his caretaker resided. There was also a newly constructed mabati structure put up by the Respondents. The suit property has been forcefully ploughed by the Respondents.
20. It is the Applicant's contention that this is the status which his counsel asked the court to maintain and that the Respondents' counsel tried to oppose the same but the court overruled him.
21. The Applicant's contention is that despite the existence of the court orders, the Respondents went ahead to threaten his caretaker and demolished the mud walled house which he occupied. The Applicant further contends that the Respondents have planted maize on the suit property despite the court order.
22. The Respondents opposed the Applicant's application through a replying affidavit sworn on 19<sup>th</sup> July, 2021. The Respondents contend that they have been in possession of the suit property since 1991 when the same was allotted to them. They have been growing maize on it and that they had constructed a mabati house on it and ploughed and planted maize on it.
23. The Respondents had even applied for water connection to the suit property and paid for the same. Following threats by the Applicant, the Respondents reported to Yamumbi Police Station and they recorded a statement. The Respondents contend that they have not disobeyed any court order and that they have maintained the status quo as ordered by the court.
24. The parties were directed to file written submissions. The Applicant filed submissions dated 28<sup>th</sup> October, 2021. The Respondents filed submissions dated 2<sup>nd</sup> November, 2021. I have considered the Applicant's application as well as the opposition to the same by the Respondents. I have also considered the submissions by the parties. The only issue for determination is whether the Respondents are in contempt of the court order of 4/3/2021.
25. I have looked at the proceedings of 4<sup>th</sup> March, 2021. Contrary to the allegations by the Applicant that the status quo on the ground was defined to the court and that the Respondents' counsel tried to object to the status quo and was overruled by the court, there is nothing to that effect. The Applicant's counsel simply asked that the status quo be maintained. There was no rejoinder by the Respondents' counsel. The court then stated that the status quo be maintained until interparte hearing of the application.
26. There was no definition of what the status on the ground was. For one to be guilty of contempt, it must be proved that there was a valid court order granted; that the order was served upon the contemnor or that the contemnor was aware about it and that the contemnor deliberately disobeyed the said order.
27. Contempt of court is a quasi criminal offence. If one is convicted, he can be jailed thus losing his liberty. It is therefore imperative that it be proved beyond reasonable doubt.
28. In the instant case, it is clear that the status of the suit property on the ground was not defined. In the case of **Shimmers Plaza Ltd -Vs- National Bank of Kenya Ltd [2015] eKLR**, the Court of Appeal stated as follows regarding status quo:-
- “Status quo in normal English parlance means the present situation, the way things stand when the order is made, the existing state of things. It cannot, therefore, relate to the past or future occurrences or events. We fail to see what can be ambiguous about that order. All it meant was that everything was to remain as it was at the time that order was given. If there was any transaction of whatever nature that was going on in respect of the land in question, it had to freeze and await the discharging of the Court order. The agreement of sale may have been signed prior to that date, but once the court ordered maintenance of the status quo, everything else had to wait.”***
29. This court is therefore left to deduce what the status quo was on the ground from the documents filed by the parties. As at the time of going to court, the Respondents had moved into the suit property and constructed a mabati structure. The purpose of doing this was to commence development of the suit property which they say they had been occupying since 1991 when the same was allotted to them.
30. The suit property had also been ploughed by the Respondents as at the time the suit was filed. Though the Applicant claims that his caretaker's house was demolished, annexure marked “A” in the supporting affidavit to the application for contempt shows that the structure is intact and is in the same state as per the documents annexed to the Plaintiff filed herein even before the contempt proceedings were filed. The Applicant has therefore failed to tender any evidence to show that the structure was demolished.
31. On the contention that the Respondents went on to plant maize on the ploughed suit property after the court order, again the photographs annexed to the plaintiff show that the suit property had been prepared and was ready. There is no evidence to show that maize had not been planted by then. The area next to the mud walled structure is in the same state in the application for contempt filed on 17<sup>th</sup> June, 2021 as it was when this suit was filed on 29<sup>th</sup> January, 2021. This is the same case with the ploughed area next to the mabati structure which is exactly in the same state as it was on 29<sup>th</sup> January, 2021 and on 17<sup>th</sup> June, 2021 when the application for contempt was filed.
32. Even the pictures annexed to the Applicant's submissions filed on 29<sup>th</sup> October, 2021 show the same state of the suit property as it was

when this suit was filed on 29<sup>th</sup> January, 2021 and when the contempt application was filed on 17<sup>th</sup> June, 2021. This being the case, there is no evidence that the Respondents have interfered with the orders of status quo granted on 4<sup>th</sup> March, 2021. I therefore find no merit in the Applicant's application. I proceed to dismiss the same with costs to the Respondents.

It is so ordered

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 27TH DAY OF JANUARY 2022.**

**E. OBAGA**

**JUDGE**

**27/1/2022**

In the virtual presence of:

MR. Rotich for Plaintiff/Applicant

Court Assistant – Mercy

**E. OBAGA**

**JUDGE**

**27/1/2022**