



**REPUBLIC OF KENYA**

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

**CITATION CAUSE NO. 1 OF 2015**

**IN THE MATTER OF THE ESTATE OF FREDRICK KIMUTAI ARAP CHEPKWONY**

**NANCY CHEPKORIR MITEI.....CITOR/APPLICANT**

**VERSUS**

**MIRIAM CHEPKWONY.....1<sup>ST</sup> CITEE/RESPONDENT**

**KENETH MITEI.....2<sup>ND</sup> CITEE/RESPONDENT**

**RULING**

The application dated the 16<sup>th</sup> day of December 2015 seeks the following orders

1. Spent
2. That the Respondents do and hereby show cause why they should not be committed to civil jail.
3. That an order of committal be made against MIRIAM CHEPKWONY and KENNETH MITEI Respondents herein to prison for such period of six months in that the Respondents have disobeyed orders made herein by this honourable court on 22.10.2015 directing the 1<sup>st</sup> citee/Respondent to allow the citors applicant to till her portion of the her deceased husband's land at the 1<sup>st</sup> citees home and restraining 1<sup>st</sup> and 2<sup>nd</sup> Respondents from causing disturbance to the citor while she tills the land pending the hearing and determination of succession proceedings.

It is the applicants contention that the citees contemptuously and in disobedience of the court orders made on 22<sup>nd</sup> October 2015 as above proceeded to deny the citor to till the portion of land that had been given to her late husband and has chased her away from her late husband's portion. It is further submitted that on 23<sup>rd</sup> October 2015 the citor sent some labourers to help her pluck tea in the portion of land given to her husband but the 1<sup>st</sup> Respondent chased them away. The 1<sup>st</sup> Respondent proceeded to fence the land in question ploughed part of it, planted maize and has been grazing on another portion.

Further, it is contended that the 2<sup>nd</sup> Respondent went ahead and cut trees belonging to the citor and blocked a borehole where the citor fetches water

The citor denies the allegation contained in the Respondents replying affidavit filed on 4.1.2016 in which it is deponed that the late Erick Mitei was married to two wives a fact which is strenuously denied.

Further, that the photograph annexed to the Respondents replying affidavit do not reflect and show the

correct parcel of land apportioned to the citors late husband

It is the Respondents contention that they have not disobeyed the courts order by denying the applicant to till her part of land as directed by the court. It is submitted that the 1<sup>st</sup> Respondent is a wife to the late Fredrick K Chepkwony who died intestate (without will) on 25.1.2008. He was the registered owner of land LR Kericho/Silibwat/1313 comprising of 3.933 hectares.

It is contended that the 1<sup>st</sup> Respondent and the family agreed to sub divide the land among her children including the applicant but the applicant refused to take the portion allocated to her and now wants to take that belonging to the 2<sup>nd</sup> Respondent.

In this case the bone of contention appears to be the ascertainment of “that piece of land allocated to the applicants late husband.” For the court to come to the conclusion that there was disobedience of its orders hence contempt, that piece of land allocated to the citors late husband must be ascertained.

That is an issue that cannot be determined through evidence by affidavits but through viva voce evidence.

The photographs annexed to the affidavits are not helpful as they are contested.

What is before the court is the word of the citor against that of the citees. It is not determinable at this juncture whether the applicants labourers were chased away from plucking tea leaves at the applicants portion of land as none of them has testified to that effect.

If the citees ploughed and planted maize, its not clear which portion of land. These acts were carried on or done.

In conclusion, from the evidence before this court its not proved that the citees disobeyed the orders of the court dated 22<sup>nd</sup> October 2015.

In the submissions filed in court by both parties it is not in dispute that a succession cause has been filed in regard to the estate of the Deceased there is need to fast track it so that the interest of the beneficiaries are taken into account and determined

The upshot is that this application fails and its dismissed. Each party to bear its own costs.

Ruling delivered dated and signed this 14<sup>th</sup> day of December 2016 in open court and in the presence of Mrs Kirui for the citor, Kenduiwa for the citer.

**M. MUYA**

**JUDGE**

**14.12.2016**