

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO.14 OF 2015

EMMANUEL SATIA PLAINTIFF

VERSUS

YOHANA KEMBOI..... DEFENDANT

R U L I N G

1. The plaintiff/ Applicant filed a notice of motion dated 9.4.2015 seeking orders committing the defendant/ Respondent to civil jail for contempt of court. The applicant states that he filed a suit against the respondent on 16.2.2015 and contemporaneously filed an application in which he sought injunctive orders against the respondent. When the application came up for inter partes hearing on 26.2.2015, the advocate for the applicant and the respondent agreed to interim injunction being granted pending hearing of the application on 23.3.2015.
2. The interim injunction was extended by consent of the advocates for the parties to 21.4.2015 when the application for injunction was to be heard. The order which was duly extracted was served upon the respondent on 28.2.2015. On the 11.3.2015 the respondent went to the suit land and informed the applicant's caretaker that he was going to prepare the suit land for planting. On 1.4.2015 the applicant's caretaker again called him and told him that the respondent had ploughed the suit land and had brought seeds which he kept in a neighbour's house. On 2.4.2015 he brought in fertilizer. He started planting on 6.4.2015 and completed the exercise on 7.4.2015. The applicant sought the intervention of the OCS who arrested the respondent who was however released.
3. The applicant now prays that the respondent be committed to civil jail for disobedience of a court order. The respondent neither filed reply to the application for injunctive orders nor the one for contempt. The respondent's lawyer was however present when the application for contempt of court was argued.
4. I have considered the applicant's application for contempt together with the annexures to the supporting affidavits. For one to be found guilty of contempt of court order, the applicant has to prove that there was a valid court order; that the court order contained a penal notice and that the court order was personally served upon the contemnor or that the contemnor was aware of the court order.
5. In the instant case there was a valid court order issued on 26.2.2015. This order was given upon consent of the advocate for the applicant and that of the respondent. The order was extracted and it contained a penal notice. The extracted order was duly served upon the respondent on 28.2.2015 as confirmed by the affidavit of service by a process server sworn on 20.3.2015. The process server who served the order upon the respondent is same one who had served him with the summons to enter appearance.
6. The applicant's caretaker John Chepkweyech swore a supporting affidavit on 8.4.2015. He has deponed on how he tried to prevent the respondent from going on with planting on the suit land but the respondent instead assaulted him telling him that court orders were mere papers. The respondent not only assaulted the applicant's caretaker but his wife too. The applicant's caretaker has annexed copies of P3 forms issued by Kitale Police Station. The assault took place on 7.4.2015.
7. The respondent went ahead to do what the court order had restrained him to do. He did this with impunity. He is clearly in contempt of the court order. If litigants were to be allowed to disobey court orders with such impunity this will encourage people to take the law into their own hands. Court orders must be respected. I find that the respondent is in contempt of the court order

which restrained him from interfering with the suit land. A warrant of arrest is issued against him. Warrant of arrest to be effected by the Officer Commanding Kitale Police Station. The respondent once arrested should be brought before the court for appropriate sentence.

It is so ordered.

Dated, Signed and delivered at Kitale on this 21st day of May 2015.

E. OBAGA

JUDGE

In the presence of M/S Arunga for Applicant . Court Clerk - Isabellah

E. OBAGA

JUDGE

21.5.2015