

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

CIVIL CASE NO: 123 OF 2009

CLEOPHAS DINDI.....PLAINTIFF

VERSUS

MICHAEL OJAY OTIENO.....RESPONDENT

RULING

The application dated 17/9/2013 seeks to have the proceeds of cane harvested from plot number **SOUTH WANGA/BUKAYA/1012** be deposited in court pending the final determination of the main suit. Mr. Amasakha, Counsel for the applicant relied on the supporting affidavit and submitted that there was a court order issued on 15/12/2011 restraining the respondent from utilizing the suit land but the order was ignored.

On his part, the respondent filed a replying affidavit sworn on 5th November, 2013. The respondent maintains that the cane that was planted on the suit land belongs to his son **Thomas Odino Dindi**. His son has been on the said suit land for more than 9 years. The respondent further contends that he has never signed any sugar cane contract with Mumias Sugar Company.

The court record shows that on 23/12/2011, the court issued an order restraining the respondent, his agents, or assignees from further cultivating or dealing with the suit land pending inter parties hearing of the application dated 14/12/2011. I take notice of the fact that sugar cane in the western region takes about two years to mature. The applicant contends that on 3rd and 13th August, 2013, the plaintiff or his agents harvested cane and delivered it to Mumias Sugar Company Limited. The cane must have been planted either shortly before the order was issued or shortly before the application was filed.

The respondent maintains that the cane belongs to his son who has been using the land for over nine (9) years. That could be so but the court restrained the respondent and his agents or servants who should include his sons from utilizing the suit land. The court order was disobeyed and the court cannot simply agree to the claim that the plaintiff's son has been planting cane on the land for a long time. That would be tantamount to setting aside the court order.

I do find that the application dated 17/9/2013 is merited and the same is granted as prayed. The cane proceeds shall be deposited in court as prayed. Costs in the cause.

Dated, signed and Delivered at Kakamega this 20th day of March 2014.

SAID J. CHITEMBWE

JUDGE