



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

CIVIL SUIT NO. 13 OF 2013

ABEL ODHIAMBO WERE..... PLAINTIFF

VERSUS

**1. MARGARET AUDI ONG'ARO
2. EVERLYNE AKINYI ONG'ARO DEFENDANTS**

RULING

1. The Plaintiff/Applicant Abel Odhiambo Were brought a notice of motion dated 28/1/2014 in which he seeks the following reliefs;-

(a) That the first and second defendant/respondents be committed to jail for six months for disobeying a court order.

(b) That costs of this application be borne by the defendants/respondents.

2. The Plaintiff/Applicant had filed a suit against the defendant/respondents on 7/2/2013. He also filed an application for injunction on the same day. The application for injunction was argued on 14/5/2013 after the court was satisfied that the respondents had been duly served but they neither entered appearance or filed any replying affidavit.

3. In a ruling delivered on 10/4/2013 the defendant/Respondents were restrained from selling, trespassing, leasing, transferring, destroying and/or dealing in any other manner with land parcel number Kitale/Municipality LR 2116/260 (13679) pending the hearing and determination of the main suit.

4. Prior to the ruling of 10/4/2013, the application for injunction had been heard ex-parte and temporary orders of injunction given against the respondents.

5. The orders from the ex-parte injunction were extracted and were personally served upon the two respondents. On 5/3/2013. The order had a penal notice on it. Despite the orders being served upon the respondents, they ignored the same and proceeded to commit various acts of contempt starting with entering into a sale agreement with a third party on or about 6/3/2013 which acts of contempt culminated into the transfer and registration of the suit property in the name of a third party.

6. The respondents who were duly served with the application for contempt did not respond to the same. I have looked at the supporting affidavit of the applicant sworn on 28/1/2014. The order of 19/2/2013 was duly extracted with a penal notice on it. The same was served upon the respondents by a process server called Kenneth O. Oduor. The order was personally served upon the two respondents at their home in Siaya. The two respondents are co-wives.

7. It is clear from the documents annexed to the applicant's affidavit that the property has been transferred to a third party. The transfer was effected on or around 16/12/2013. This was done in total disregard of the orders of the court.

8. The respondents went ahead to commit the acts of contempt complained of with impunity court orders are given so that they can be obeyed for the sake of law and order.

9. I find that the court order was personally served upon the contemnors. The contemnors went ahead to do what the court order had restrained them from doing. The two respondents have to face consequences for disobeying the court order. As the applicant has succeeded in his motion, I hereby issue a warrant of arrest for the two contemnors to be arrested and brought before the court so that they can be dealt with as appropriate.

It is so ordered.

Dated, signed and delivered at Kitale on this 18th day of March, 2014.

E. OBAGA,

JUDGE

COURT: At 9.43 a.m. No appearance. File is returned to the registry. Parties can read ruling at the registry. Court Clerk – Kassachoon.

E. OBAGA,

JUDGE

18/3/2014