



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

ELC. NO. 36 OF 2014 (OS).(FORMERLY HCC. 26/2008)

EMMANUEL ODUOR NANJIRA PLAINTIFF

-VERSUS-

JOHN WALOBWA RAJIRA DEFENDANT.

R U L I N G.

EMMANUEL ODUOR NAJIRA, hereinafter referred to as the Applicant, filed the Notice of Motion dated 8th September, 2012 through M/S. Gabriel Fwaya advocates, against John Walobwa Rajula, hereinafter referred to as the Respondent. The Applicant prays for the Respondent to be arrested and detained for six months for disobeying or breaching the court order of 2nd November, 2010. He also prays for costs. The application is supported by the affidavit of Emmanuel Oduor Nanjira sworn on 8th September, 2012 in which he inter alia states:

1. That this suit was concluded through the consent order of 2nd November, 2010 and an order of permanent injunction issued against Respondent from interfering with land parcel Marachi/Elukhari/3053.
2. That the consent order was extracted and copy served on the Respondent on 28th June, 2012.
3. That on 29th June, 2012, the Respondent forcefully ploughed the said land and later planted sugarcane.
4. That efforts to stop the Respondent from interfering with the said land have failed and hence this application.

The application was served on the Respondent but to date he has not filed any reply. On 22.10.2013, the court issued warrant of arrest for the Respondent. He was duly arrested and presented to the Deputy Registrar on 2/12/2013 and before this court on 3rd December, 2013 when he was released on bond on application of his advocate pending the hearing of the application. The application was finally heard on 13th May, 2014 and even though the Respondent had not filed any replying papers, the court allowed him to be heard after rejecting his application for adjournment.

The Respondent conceded that he continued using the suit land even after the order of 2nd November, 2010 was issued claiming he had planted sugarcane on it. He said he was last on the land in January, 2014 and indicated he will not go back to the land as he has now understood the terms of the order of 2nd November, 2010.

Having heard Mr. Fwaya advocate for the Applicant on one part and the Respondent on the other part, and having carefully considered the contents of the supporting affidavit sworn on 8th September, 2012, the court finds as follows;

1. That this suit was commenced by the Applicant through the plaint dated 25th August, 2008.
2. That the main prayer in the suit is in paragraph 12(a) that an order of permanent injunction be issued restraining the Respondent and any other person claiming from him from interfering with Applicant's use of Marachi/Elukhai/3053.
3. That the Respondent filed a defence dated 22nd December, 2008 through M/S. Ouma –Okutta Associates and Advocate.
4. That on 2nd November, 2010 in the presence of Applicant, Respondent and their advocates, the Applicant's claim was allowed in terms of prayer (a) with 50% of the costs.
5. That the consent order was extracted on 22.12.2011 and served on the Respondent on 28.6.2012.
6. That the Respondent has been cultivating sugarcane on the suit land as confirmed by himself contrary to the order of 2nd November, 2010 which amounts to disobeying the said court order.
7. That the Respondent has not given any reasons why he is unable to comply with the court order that was entered by consent..

From the foregoing, the court finds that the Applicant has established that the Respondent has been ploughing and cultivating sugarcane on the said land without his consent. This amounts to disobeying the court order of 2nd November, 2010 and under Order 40 Rule 3 of the Civil Procedure Rules and section 63 of the Civil Procedure Act, the Respondent may have his properties attached and subsequently sold and detained in prison for a term not exceeding six months. The Applicant has applied that Respondent be detained for six months for disobeying the court order and the Respondent has not given any plausible reason for not obeying the court order of 2nd November, 2010. The Respondent has not challenged the said order in accordance with the laid down legal provisions and the court cannot fold its hands when a party is disobeying its orders. The application is granted and the Respondent namely John Walobwa Rajira is hereby detained at the prison for six months under order 40 rule 3(1) of Civil Procedure Rules for disobeying the order of 2nd November, 2010.

It is so ordered.

S.M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON 17th DAY OF JUNE , 2014

IN THE PRESENCE OF ; Applicant, Respondent and Mr. Fwaya for Applicant.

JUDGE.