

LUCAS KIBEGWA OKARA.....PLAINTIFF

-VERSUS-

NYAKEYO ANYEGA.....DEFENDANT

RULING

On 4th March, 2011, **Sitati J.** granted on application in which the plaintiff had sought to restrain the defendant from interfering with a parcel of land known as **Wanjare/Bokeire/1682** pending the hearing and determination of the suit. The plaintiff claims that he served the order together with the penal notice upon the defendant. This fact has not been disputed by the defendant who in his replying affidavit sworn on 23rd May, 2011 has conceded that he was in fact served with the order.

Whereas, the plaintiff alleges that the defendant breached the said order of the court by cutting trees on the suit parcel of land, the defendant denies that he did such a thing. In his replying affidavit, the defendant has averred that he in fact cut the trees in the parcels of land known as **Wanjare/Bokeire/1833** and **2953**. This averment has not been disputed by the plaintiff in form of a further affidavit. The applicant has instead alluded to a topographical error which has not been explained.

I have carefully considered the rival facts of this application. It is clear to this court that the plaintiff has not established that the defendant is in breach of the orders granted by the court which specifically applied to the parcel of land known as **Wanjare/Bokeire/1682** and not **Wanjare/Bokeire/1833** and **2953**. Unless the plaintiff can establish the nexus between the three parcels of land, this court is unable to make a finding to the effect that the defendant has been in breach of the orders of this court.

Contempt proceedings are quasi criminal in nature and therefore the standard required to establish contempt is higher than that ordinarily applied to civil cases being proof on a balance of probability. This is because if the person sought to be committed for contempt is found to have breached the order of the court, he may be subject to losing his liberty. The plaintiff did not discharge this burden.

Consequently the application lacks merit and is dismissed with costs.

Ruling dated, signed and delivered at Kisii this 23rd day of August, 2012.

R. LAGAT-KORIR
JUDGE

In the presence of:

Edwin Mongare court clerk

..... Counsel for the plaintiffs
..... Counsel for the defendants

R. LAGAT-KORIR
JUDGE