



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISII

CIVIL CASE NO. 541 OF 1993

JONYO OGALO OMITI (DECEASED)1ST RESPONDENT/PLAINTIFF

ONYANGO OMITI2ND RESPONDENT/PLAINTIFF

OKOTH OMITI3RD RESPONDENT/PLAINTIFF

**OBONYO OMITI4TH
RESPONDENT/PLAINTIFF**

**AYOKO OMITI5TH
RESPONDENT/PLAINTIFF**

**ODERO OMITI6TH
RESPONDENT/PLAINTIFF**

VERSUS

FELERIA OWANDE OMITI (DECEASED).....1ST APPLICANT/DEFENDANT

JOTHAM OUMA OMITI.....2ND APPLICANT/DEFENDANT

ELIAKIM OGALO OMITI3RD APPLICANT/DEFENDANT

RULING

This application by the 2nd defendant is dated 23rd September, 2009. He is acting in person. He sought the following orders:

“1. That this application be certified urgent and be heard on priority basis.

2. That the respondents/plaintiffs herein including State Trust Executor, retired Assistant Chief Elizaphan Odero Omiti be committed to civil jail for a term not exceeding six months or to such extents that the honourable court may direct for disobeying and/or disregarding the lawful court orders issued on the 29th day of November 2001 to restraining (sic) the

respondents/plain tiffs, their agents, servants or employees from operating/using by forcefully and wrongfully (sic), retaking possessions of access roads and land No. Kamagambo/Kabuoro/881 when the Assistant Chief acted without appointment letter.

3. That the contempt of court orders its consequences to be made using the law for degrading the court openly.”

Though the orders sought hereinabove are not very clear, from the applicant’s supporting affidavit it can be discerned that he was making reference to orders that were made by Wamiblyangah, J. on 29th November, 2001. He stated that the court ordered that the access road passing between land parcels Nos. 881 and 797 be re-opened forthwith. That had however not been done.

The respondents through their advocate, M/s Oguttu Mboya, filed a statement of grounds of opposition and stated that the application is premature, misconceived and otherwise bad in law. He further stated that the orders of the court sought to be enforced were directed against third parties (Government Officials) who have not been joined in these proceedings. The application had also been brought in contravention of **section 5 of the Judicature Act** and was an abuse of the court process.

When the application came up for hearing on 5th July, 2010, the applicant sought to rely on his affidavit and urged the court to grant the orders as sought. He lamented that his family was suffering because the aforesaid court orders had not been obeyed.

Mr. Ochwangi for the respondents submitted that the parties who were supposed to execute the court order had not been made parties to this application and so the orders sought could not issue. He further pointed out that leave to commence contempt proceedings had not been sought as required under the law. Although the applicant is not represented by an advocate, this court must apply the law as it is in determining this application. It would appear that the persons who were supposed to have executed the court order are not parties to this suit. It is doubtful whether they were served with the orders that they were required to execute. But even if that was done, they were not served with this application. It is also evident that leave of the court was not sought before this application was filed. The application is incompetent and the orders sought cannot be granted. The applicant is advised to seek services of an advocate to assist him in this somewhat complex matter. I dismiss the application with costs to the plaintiffs.

DATED, SIGNED AND DELIVERED AT KISII THIS 28TH DAY OF JULY, 2010.

D. MUSINGA

JUDGE.

28/7/2010

Before D. Musinga, J.

Mobisa – cc

Mr. Ogweni for Mr. Oguttu for the Plaintiff

Defendants – absent

Court: Ruling delivered in open court on 28th July, 2010.

D. MUSINGA

JUDGE.