



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT KITALE  
Civil Suit 175 of 2006**

**CHARLES K. KITIYO.....PLAINTIFF.**

**VERSUS**

**DAVID KIPTUM            )  
GIBERT SIRET            ).....DEFENDANTS.  
SIMON KIBOI            )  
ROBERT KIBOI MUSARU )**

**RULING.**

By a Notice of Motion dated 1<sup>st</sup> December, 2008,, pursuant to the provisions of order XXXIX Rule 2A of the Civil Procedure Rules, the applicant seeks orders:-

1. **THAT**, this honourable court be pleased to make an order committing the respondents to jail for disobedience of the court order issued on 29<sup>th</sup> March, 2007, for a period to be stated by court.
2. Costs be provided for.

The application is based on the grounds:-

- (a) That the respondents have refused to comply with the court order.

The application is supported by the annexed affidavit of Charles Kitiyo sworn on the 1<sup>st</sup> day of December, 2008.

The application was served on the firm of Walter Wanyonyi & Co. advocates who failed to file grounds of opposition or replying affidavit within the time prescribed by law. In deed counsel for the respondents conceded that he had lost touch with his clients. The application thus proceeded ex-parte.

On behalf of the applicant, it was argued that on the 29<sup>th</sup> day of March, 2007 an order of injunction endorsed with a **PENAL NOTICE** was issued restraining the defendant/respondents from interfering with ten (10) acres of a piece of land to wit. Plot No. 689 Kitalale Settlement Scheme. The court order in respect thereof is exhibited as “CK1”

Subsequently service thereof was effected on 20<sup>th</sup> April, 2007. An affidavit of service to that effect is exhibited as “CK2”

Notwithstanding service as aforesaid the defendants have refused to obey the order and have continued to interfere with the possession of the suit land as particularized in the affidavit in support.

On diverse days in the year 2008 the applicant made several reports to the District officer Saboti concerning the respondent’s disobedience of the court order as encapsulated in exhibits “CK3” and “CK4”. The nature of interference with the suit land has taken the form of cutting trees and maize. The applicant has in addition to reporting to the District Officer as aforesaid reported the incidence also to the police as captured in exhibit “CK5”. To add salt to the injury, on 16<sup>th</sup> April, 2007, the respondent assaulted the applicant while working on the suit land. A report of this incident to the police is captured in Exhibit “CK 6” – P3 form. Further, in September, 2008 the respondent destroyed the applicants crops growing on the suit land. Once again a report to the police exhibited as “CK 7” was made.

In the premises, it was the applicant's contention that the respondents are law unto themselves. In essence they do not respect the court order hence this application.

The power donated to a court of law to deal with contempt of court is donated by section 5 of the Judicature Act (Cap 8) Laws of Kenya and order XXXIX Rule 2 (3) of the Civil Procedure Rules. In addition thereto the Kenyan courts have to follow the procedure and practice in England. The English position is that as a general rule, no order of court requiring a person to do or abstain from doing any act may be enforced (by committing him for contempt) unless a copy of the order has been served personally on the person required to do so or abstain from doing the act in question. The said copy of the order served must equally be endorsed with a penal notice informing the person on whom the copy is served that if he disobeys the order, he is liable to the process of execution to compel him to obey it.

I have scanned through the proceedings herein and practically the order served. It is clear to me that the terms of the order of injunction are clear and unambiguous. It is equally clear to me that the order was endorsed with the Penal Notice and the defendant had proper notice of the terms. Thus the breach of the injunction has been proved beyond reasonable doubt.

In the premises, I commit each and every one of the respondents to pay a fine of Ksh. 10,000/= or serve six months imprisonment for disobeying the court order. It is so ordered.

Dated and delivered at Kitale this .....**20<sup>th</sup>** ..... day of .....**JANUARY**..... 2009.

**N.R.O. OMBIJA.**

**JUDGE.**

**Mr Kidiavai for Arunga for plaintiff**

**Mr. W. Wanyonyi for defendant**