



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 497 OF 2017

FORMERLY KISII ELC NO. 190 OF 2016

JAMES OLOOLKEYAI OLE SERIANI.....PLAINTIFF

-VERSUS-

OLE NKOLIAL.....1ST DEFENDANT

STEPHEN NKOLIAL.....2ND DEFENDANT

DAVID NKOLIAL.....3RD DEFENDANT

NDEGE KIPOS.....4TH DEFENDANT

DAVID MPILEL.....5TH DEFENDANT

RULING

The Application before me is the Notice of Motion dated 26th July, 2018 by the Plaintiff/Applicant seeking orders directing the Respondents to remove new fence that they have erected across LR No. Trans Mara/Olomisisi /972, an order for Review of the orders of the court made on 16th July, 2018 in which the 3rd Respondent was set free without purging the contempt and an order for the arrest of the Respondents for purpose of conviction or committal in line with the findings of the ruling of the court dated 10th July, 2018.

The Application was based on the grounds that the Respondent despite the existence and service of a court order continued to disobey the terms of the aforesaid order and the court ordered for the arrest of the respondent and proceedings were conducted in the absence of the plaintiff.

The Application is further based on the ground that there was an error apparent on the face of the record to the extent that the court did order for the arrest of the 3rd respondent only whereas all were in contempt of the orders of the court.

The Application was supported by the Affidavit of the Applicant in which he deponed to the grounds on which the Application was based.

The Application was opposed by the respondents by way of a replying affidavit in which the 3rd Respondent with the authority of the other respondents averred that he was arrested and brought before court but warned to adhere and observe the orders of the court dated 26th July, 2017 and 8th December, 2016.

The Respondents further averred that the Plaintiff's Application are driven by ulterior motives and he is bent to obtain the suit property by whatever means.

I have read the application before me and the affidavit in support and that in opposition. The gist of the application is to seek a review of the orders of the court issued on 10th July, 2018.

Even though the Applicants seek for a number of orders the main issue for determination before me is whether I should vary the orders issued on 10th July, 2018. The court on the said date following an application by the applicant sought to have the Defendant to be jointly cited for contempt of court. However, the court inadvertently ordered for the arrest of the 3rd respondent alone leaving the rest.

From the record before me it is clear that the contempt complained about was perpetrated by all the respondents and it is my finding that this

amounts to an error on the face of the record and I accordingly vary the orders that were issued on 10th July, 2018 and order that all the Respondents/Defendants were indeed in contempt and they ought to have been produced.

From the foregoing therefore, I find that each of the Defendants/Respondents are in contempt and I order that OCS Kilgoris to arrest all the Respondents and produce them before court as soon as reasonably possible. Costs in the cause.

Orders accordingly.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **2nd** day of **October, 2018**

Mohammed Noor Kullow

Judge

2/10/18

In the presence of:-

CA:Chuma

Mr Mukoya for the Defendant/Respondent

Mr Ogutu for the plaintiff