



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT ELDORET**

**E & L CASE NO. 520 OF 2012**

ISAAC KIPKEMBOI CHESIRE.....1<sup>ST</sup> PLAINTIFF  
KIMUTAI CHESIRE..... 2<sup>ND</sup> PLAINTIFF  
ISAAC KIMUTAI.....3<sup>RD</sup> PLAINTIFF  
MARY CHEPKOECH CHESIRE.....4<sup>TH</sup> PLAINTIFF  
JONAH KIBIWOTT CHESIRE.....5<sup>TH</sup> PLAINTIFF

**VERSUS**

JOSEPH KIMITEI KWAMBAL.....1<sup>ST</sup> DEFENDANT  
JOHN MALAN SAWE.....2<sup>ND</sup> DEFENDANT  
GROWELL FARM LIMITED.....3<sup>RD</sup> DEFENDANT  
THE LAND REGISTRAR, UASIN GISHU COUNTY.....4<sup>TH</sup> DEFENDANT

**AND**

ROSE CHERUIYOT RONO.....1<sup>ST</sup> INTERESTED PARTY  
HENRY BARMAO.....2<sup>ND</sup> INTERESTED PARTY  
KIBET KANGOGO.....3<sup>RD</sup> INTERESTED PARTY  
KIMAIYO RONO.....4<sup>TH</sup> INTERESTED PARTY

**RULING**

**[NOTICES OF MOTION DATED THE 8<sup>TH</sup> FEBRUARY 2021, 17<sup>TH</sup> MARCH, 2021 AND 31<sup>ST</sup> MARCH, 2021]**

1. This ruling relates to three applications that will be referred to by their dates of filing. The first is by the 1<sup>st</sup> plaintiff and is dated the 8<sup>th</sup> February, 2021. The application seeks for the following orders:

(a) Spent;

(b) This Honourable Court be pleased to order for the cancellation of title numbers Kiplombe/Kiplombe/Block 10 (Growel) 538 to 551 (being subdivisions of suit land parcel Kiplombe/Kiplombe/Block 10 (Growel Farm) 44);

(c) That Joseph Kimitei Kwambai, the 1<sup>st</sup> Defendant/ respondent herein be and is hereby ordered to surrender into court for purposes of cancellation of the titles for land parcels Kiplombe/Kiplombe/Block 10 (Growel) 538 to 551 (being subdivisions of suit

land parcel Kiplombe/Kiplombe/ Block 10 (Growel Farm) 44);

(d) That pursuant to the prayer (b) above, an order be and is hereby issued requiring the Land Registrar Uasin Gishu County to rectify the parcel register for the land parcel Kiplombe/ Kiplombe/Block 10 (Growel Farm) 44;

(e) This Honourable Court do find Joseph Kimitei Kwambai, the 1<sup>st</sup> Defendant/ Respondent and the Land Registrar, Uasin Gishu, the 4<sup>th</sup> Defendant/Respondent either jointly or severally to be guilty of disobedience of court order dated 29<sup>th</sup> March, 2009 and subsequent orders of status quo as extended from time to time and to mete punishment by imprisonment for a period not exceeding six (6) months or to pay a fine to be prescribed by the court or both; and,

(f) The costs of this application be borne by the respondents.

The application is based on the twelve (12) grounds on its face among them being that in the court's ruling of 29<sup>th</sup> April 2016, that dismissed an application for leave to amend the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' defence and counterclaim, the court made a finding that the subdivision of land parcel Kiplombe/Kiplombe/Block 10 (Growel Farm) 44 into land parcels Kiplombe/Kiplombe/Block 10 (Growel) 538 to 551 was done despite the existence of a court order. He avers that this court denied the application to amend stating that to do so would be to condone the disobedience of an unequivocal court order. That as the 1<sup>st</sup> defendant has in his affidavit of 30<sup>th</sup> July, 2020 on oath stated that he held titles to land parcels Kiplombe/Kiplombe/Block 10 (Growel) 538 to 551, he should be found in contempt of this court. He also faults the Land Registrar for failing to cancel the titles in question. The 1<sup>st</sup> plaintiff further states that the 1<sup>st</sup> defendant has been offering to the public for sale the illegal subdivisions of the suit property.

The application is supported by an affidavit sworn by the 1<sup>st</sup> plaintiff on the 8<sup>th</sup> February 2021, in which he reproduced the terms of the court's orders over the suit property of 29<sup>th</sup> May, 2009 and 29<sup>th</sup> April, 2016 whose copies are annexed to the affidavit. Also attached to the affidavit are copies of the sale agreements that he alleges the 1<sup>st</sup> defendant is using to offer the illegally subdivided portions for sale, and urged the court to step in and punish this contempt.

2. The 1<sup>st</sup> defendant opposed the application through the replying affidavit sworn on the 18<sup>th</sup> March, 2021. He depones that there were no court orders condemning him at the time the subdivision was done and that the application was frivolous and aimed at delaying the hearing. He denied having been served with any orders of injunction of 29<sup>th</sup> May, 2009 and further that his previous advocate was served. He claims that the only injunction that bound him was that issued in Eldoret HCCC No. 23 of 2007 but which was discharged on 31<sup>st</sup> July 2007, and that as at 2008, there were no restriction from dealing with Kiplombe/Kiplombe Block 10 (Growel) 44. That the subdivision of Kiplombe/Kiplombe Block 10 (Growel) 44 was done on or about 2008 and annexed a mutation form of the suit property dated 21<sup>st</sup> April, 2008 as evidence thereof. He denied service of the court's orders of 29<sup>th</sup> April, 2016 and denied that the said orders and affidavit proving service thereof have been annexed to the 1<sup>st</sup> plaintiff's application. He restated that the plaintiffs did not have a case against them and therefore were not deserving of the orders sought. He also averred that there was no basis for his titles to be cancelled and as such that the Land Registrar should not be punished. The 1<sup>st</sup> defendant did not deny in his replying affidavit that he held titles to land parcels Kiplombe/Kiplombe/Block 10 (Growel) 538 to 551 but denied having acted in contempt by selling some of the above titles to Micah Kipkoech Ngeno and Isaac Kiptarus Mutai which he claims was done in 2011. He claimed that because the two were not parties to the suit, the issuance of any orders herein would be averse to their interests. He avers that he sold the land as he is a retired civil servant. The 1<sup>st</sup> defendant also denied any claims that he was perpetrating fraud or that he was committing the offence of obtaining money by false pretenses by offering the subdivided parcels of land for sale. He stated that the 1<sup>st</sup> plaintiff's affidavit was scandalous, offensive and oppressive and that it should be struck out. He also claimed that this application was seeking orders that were substantially similar to prayers sought in the further amended plaint of 13<sup>th</sup> June 2018, and asserted that the 1<sup>st</sup> plaintiff was apprehensive of losing the suit and thus he filed this application. As regards the averment that he was causing trouble on the suit property, he admits that pursuant to a complaint made by the 3<sup>rd</sup> plaintiff on 15<sup>th</sup> March 2021, police officers came to the suit property and found that there was actually no breach of peace. He avers that, dissatisfied, the 3<sup>rd</sup> plaintiff made a further complaint with the Deputy County Commissioner (DCC) who consequently directed 2 chiefs to visit the suit property. He states that on making this visit, the two chiefs confirmed there was no breach of peace and thus no action was taken. He further states that on this visit, the two chiefs confirmed the land's boundaries and found that there was no case against him.

3. That in opposition to the said application, the 4<sup>th</sup> defendant filed grounds of opposition dated 27<sup>th</sup> May 2021, that the application was an abuse of court process as the court orders sought were not capable of being granted; that the orders of stay of 29<sup>th</sup> May, 2009 had lapsed by virtue of **Order 40 Rule 6 of the Civil Procedure Rules**; that the temporary injunction of 29<sup>th</sup> May, 2009 was never registered with them anyway; that the orders were moot as the acts complained of had already been committed, and that the court lacks the jurisdiction to entertain the application.

4. In the application dated the 17<sup>th</sup> March, 2021, the 4<sup>th</sup> Plaintiff seeks for the following orders: -

(a) Spent;

(b) The Honourable Court be pleased to issue an order compelling the Contemnor/Respondent JOSEPH KIMITEI KWAMBAI, 1<sup>st</sup> Defendant herein, to forthwith remove the hired goons stationed on the suit properties and to demolish and remove the mabati structure and fencing materials that he has erected on the suit properties Kiplombe/Kiplombe/Block 10 (Growel) 44, 45 and 310 as the same was done in flagrant contempt and disrespect of the court's orders of status quo subsisting in this suit;

(c) That this Honourable Court in exercise of its inherent power do punish JOSEPH KIMITEI KWAMBAI, the contemnor/1<sup>st</sup> respondent herein for contempt, disobedience and contravention of the court order of status quo as extended on 17<sup>th</sup> November, 2020 and subsisting in this suit by imprisonment for a term not more than 6 months, or by imposing of a fine or both in that;

(i) On 15<sup>th</sup> and 16<sup>th</sup> March 2021, the contemnor/1<sup>st</sup> respondent in the company of hired goons invaded the suit properties, forcefully gained access and proceeded to cut down trees and to erect an illegal fence on a portion thereof.

(ii) The 1<sup>st</sup> respondent's conduct constituting contempt of court is continuing as he has stationed the armed goons on the suit properties which is a recipe for breach of peace and violation of the rule of law.

(d) This Honourable Court be pleased to issue an order of injunction restraining all defendants and interested parties herein either by themselves, their agents or servants from trespassing, occupying, cultivating, constructing, alienating, selling or in any other dealing or interfering with the plaintiff's use and occupation of the suit properties pending the hearing and determination of this application inter-partes, and thereafter pending the conclusion of the main suit;

(e) The OCS Kuinet police station be ordered to ensure full compliance with the orders of this Honourable Court;

(f) The contemnor/respondent be denied audience before this Honourable Court until he purges the contempt of the court order of status quo subsisting herein;

(g) This Honourable Court be pleased to make such other/further orders and directions as may be necessary to safeguard the administration of justice and the rule of law; and,

(h) The costs of this application be borne by the contemnor/1<sup>st</sup> respondent.

The application is based on the sixteen (16) grounds on the notice of motion that there exist subsisting orders of status quo in respect of the suit properties, Kiplombe/Kiplombe/Block 10 (Growel) 44, 45 and 310, which on 17<sup>th</sup> November, 2020 were extended to 22<sup>nd</sup> March, 2021. That despite this, the 1<sup>st</sup> defendant in the company of his daughter, **Pascaline Kwambai Cherutich**, an individual by the name **Isaac Kiptarus Mutai** and hired goons, invaded the suit properties, on the 15<sup>th</sup> and 16<sup>th</sup> March 2021, cut down trees and fenced off a portion of the same. The 4<sup>th</sup> plaintiff therefore urged the court to find these actions to amount to contempt and to punish the 1<sup>st</sup> defendant for the same accordingly. The application is supported by an affidavit sworn by the 4<sup>th</sup> plaintiff on the 17<sup>th</sup> March, 2021. In the affidavit, she narrates that the acts complained of herein started as threats that escalated to the invasion of 15<sup>th</sup> and 16<sup>th</sup> March, 2021. She averred that on 17<sup>th</sup> November 2020, this Court extended its orders requiring the parties to maintain the status quo in the suit properties. She states that the order, and all preceding orders were served upon the 1<sup>st</sup> defendant's advocates and annexed an affidavit in proof thereof. That despite this, she asserts that on the 23<sup>rd</sup> and 24<sup>th</sup> day of February 2021, 1<sup>st</sup> defendant, his daughter and Isaac Kiptarus Mutai invaded the suit properties in the company of goons necessitating the intervention of police to have the invaders retreat and leave the suit property. That thereafter, the plaintiffs through their advocate wrote to the defendant's advocate bringing to their attention the allegations of invasion of the suit properties by the 1<sup>st</sup> defendant, inviting them to restrain their clients and warning that contempt of court proceedings would be initiated against the 1<sup>st</sup> defendant should the acts be repeated. A copy of the letter and an affidavit proving service thereof are annexed to the affidavit. That the 1<sup>st</sup> defendant kept threatening to invade the suit property causing her and her son **Benjamin Chesire** to report to him at Kuinet police station, where the complaint was recorded as OB No. 4/09/03/2021 and she annexed an extract of the complaint in proof thereof. She states that pursuant to this, on 10<sup>th</sup> March 2021, the OCS Kuinet police station visited the suit properties to confirm the status of the land and that took pictures. She states that on the 15<sup>th</sup> and 16<sup>th</sup> day of March 2021, in fulfillment of his promise, the 1<sup>st</sup> defendant, his daughter, Isaac Kiptarus Mutai and other people invaded the suit property armed with bows, arrows and pangas. She particularized the acts of contempt complained of that occurred that day and has annexed photographs taken to prove the same. That the 1<sup>st</sup> defendant's acts led them to make a police complaint that was recorded as OB No. 12/15/03/2021 and an extract of the same has been annexed to her application. She states that following this report, the OCS Kuinet police station, accompanied by 3 police officers visited the suit properties and requested the invaders to leave which they did. However, she avers that the invaders returned on the 16<sup>th</sup> of March, 2021 and continued their acts of contempt. It is based on the foregoing that she urged this Court to punish the contemnor.

5. In opposition to the application, the 3<sup>rd</sup> and 4<sup>th</sup> Interested Parties filed their separate replying affidavits each, identical to the other, and both sworn on the 26<sup>th</sup> April, 2021. Therein, they depone that they were never served with any court order and thus cannot be in contempt. They averred that there were no goons on the land reference number Kiplombe/Kiplombe/Block 10 (Growel) 45 which they have always been in possession of. They averred that status quo orders means the person using the suit property can continue doing so. They disputed the assertion that developments were being undertaken on the suit property, and asserted to have been maintaining a fence that was already on the suit property to prevent the maize the 4<sup>th</sup> Interested Party had planted therein from being eaten by animals. They also averred they were nowhere near the suit property on the 29<sup>th</sup> March 2021, and denied being subject of the police complaints of 27<sup>th</sup> March 2021, or the existence of any continuing acts of contempt on the suit properties. Conversely, they aver that the status quo orders did not sanction the plaintiff to invade the Interested Parties' land. They asserted that the plaintiffs should not be allowed to invade the Interested Parties' land.

6. The 1<sup>st</sup> Defendant in turn filed a replying affidavit sworn on the 3<sup>rd</sup> April 2021. In it he depones that the application is a delaying tactic and that in any case, he was never personally served with this court's orders together with the penal notice. He denied having ever authorized the son to receive court documents on his behalf, and contested vehemently that any service through his son was ever made, or that the same was proper. He also challenged why he was served with the application of 8<sup>th</sup> February, 2021 personally, yet he had an advocate on record. He also decried that he had been served with two applications, one dated 8<sup>th</sup> February, 2021 and the other of 17<sup>th</sup> March 2021, all of which indicated that they would be mentioned on 22<sup>nd</sup> March, 2021. He averred that he was misled as the applications did not actually have hearing dates. He stated that the fact that there existed an application dated the 22<sup>nd</sup> July, 2020 filed by the 4<sup>th</sup> and 5<sup>th</sup> plaintiffs that was yet to be heard, the filing of the two applications was vexatious, and meant to frustrate the course of justice, which was an abuse of court process. Nevertheless, he deponed that he has always been in possession of Kiplombe/ Kiplombe/Block 10 (Growel) 44, which deed mutated to Kiplombe/Kiplombe/Block 10 (Growel) 538 to 551. He asserted that he has always been in possession of this property and that he had ploughed and planted maize on the same. He averred that the 4<sup>th</sup> plaintiff had testified in court on 16<sup>th</sup> December,

2015 admitting that the 1<sup>st</sup> defendant was in possession of this property and that he had fenced the same. He averred that the persons on this property were his workers and not goons. The 1<sup>st</sup> defendant also averred that the plaintiffs, who he referred to as **'the Chesire family'**, had on 16<sup>th</sup> January, 2020 invaded the property, destroyed his fence and took away his barbed wire forcing him to replace the same. He claims that they also attempted to destroy his temporary house on the suit property. He states that he reported this invasion at Kuinet police station. He stated that the property Kiplombe/Kiplombe/Block 10 (Growel) 43 belonged to the late Mr. Chesire, the 4<sup>th</sup> plaintiff's spouse and father to the other plaintiffs. He averred that the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> plaintiffs reside at Naiberi area, at Kiplombe/Kiplombe/Block 10 (Growel) 310, and in Kapdani area within Growel farm. That the 3<sup>rd</sup> plaintiff is a trespasser on Kiplombe/Kiplombe/Block 10 (Growel) 310. He stated administration officers came to the suit property in early March, 2021 and ascertained that there was no likelihood of breach of peace, and therefore urged the court to dismiss the application.

7. The 3<sup>rd</sup> plaintiff's application dated the 31<sup>st</sup> March 2021, seeks for the following orders: -

(a) Spent

(b) *The Honourable Court in exercise of its inherent power do direct the OCS Kuinet police station together with the Police Commander, Uasin Gishu County to ensure strict and full compliance with the order of status quo as issued/extended by this Honourable Court on 22<sup>nd</sup> March, 2021 with respect to the suit properties known as KIPLOMBE/KIPLOMBE/BLOCK 10 (GROWEL) 44, 45 and 310 by removing the goons currently stationed on the suit lands and stopping/preventing any further contempt or contravention of the court order.*

(c) *The Honourable Court in exercise of its inherent power do punish the contemnors/respondents namely **Rose Cheruiyot Rono, Kibet Kangogo, and Kimaiyo Rono**, the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Interested Parties together with **Susan Korir (daughter of the 2<sup>nd</sup> defendant, deceased)** jointly and severally by imprisonment for a period of not more than six (6) months and or a fine as may be imposed by this Honourable Court for contempt and contravening the court order maintaining status quo in respect of the suit lands as issued/extended on 22<sup>nd</sup> March, 2021.*

(d) *The Honourable Court in exercise of its inherent power do punish the contemnors/respondents unless and until they purge the contempt and contravention of the court order of status quo as issued/extended on 22<sup>nd</sup> March, 2021 by removing the fences erected on the suit property.*

(e) *The contemnors/respondents be liable to pay the costs of this committal application.*

The application was based on the eleven (11) grounds on its face that despite orders of this court of 22<sup>nd</sup> March, 2021 directing that the *status quo* be maintained, the contemnors had forcefully gained entry on the suit property in the company of armed goons and fenced of the land. He averred that the goons were stationed on the suit property and that they pose an imminent threat to the plaintiffs and their families. The 3<sup>rd</sup> plaintiff alleged that the contemnors were acting with impunity and that they aimed to defeat the course of justice by illegally altering the status of the land before the Deputy Registrar's planned site visit. The application is supported by the affidavit sworn by the 3<sup>rd</sup> plaintiff on the 31<sup>st</sup> March, 2021 in which he restates that the court issued orders on 22<sup>nd</sup> March, 2021 in his presence and that of the other parties' counsel, extending the status quo order among others. That despite this, the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Interested Parties namely **Rose Cheruiyot Rono, Kibet Kangogo** and **Kimaiyo Rono** together with **Susan Korir** (daughter of the 2<sup>nd</sup> defendant, deceased) forcefully invaded the suit property on the 29<sup>th</sup> March, 2021 and fenced off portions of it. He has annexed pictures to the affidavit and further avers that the contemnors had stationed armed goons on the suit property. That following this invasion, he made a report to Kuinet police station vide OB no 08/27/03/2021, and a further complaint to the Deputy Registrar of the court via a letter of 30<sup>th</sup> March, 2021 which he annexed to his application. The 3<sup>rd</sup> plaintiff deponed that the plaintiffs and their larger family, are the ones who have been in continuous occupation of the suit properties since 1984, wherein they have developed and buried their kin. He averred that the continuous presence of goons on the suit property continued to pose risk to their lives and those of their families, and therefore urged the court to punish this contempt.

8. In response, the 1<sup>st</sup> defendant filed a replying affidavit sworn on the 22<sup>nd</sup> April, 2021. In it he averred that he has always been in possession of Kiplombe/Kiplombe/Block 10 (Growel) 44. He claimed to have planted maize and trees on that suit property. He challenged the evidence of photographs annexed to the application to demonstrate invasion, and submitted that there were fixtures visible to wit, a fence, graveyard and borehole, that were not on his piece of land. He also denied hiring goons instead claiming he had workers on his piece of land. He therefore urged the court to dismiss the application.

9. The 4<sup>th</sup> defendant filed grounds of opposition dated 27<sup>th</sup> May, 2021, that the application was an abuse of court process as the prayers sought cannot be granted; that the order of *status quo* was ambiguous and uncertain and therefore incapable of enforcement as sought; that the OCS Kuinet police station and Police Commander, Uasin Gishu County were not parties to the suit and therefore the orders sought were directed in *vacuo*.

10. The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties filed their separate replying affidavits sworn on the 4<sup>th</sup> of April 2021, that identical in the depositions made therein. The affidavits deem this application to be an abuse of court process. They maintain that they have no problem if the OCS Kuinet police station maintains the status quo on the suit property in particular parcel number 45. They denied acting in contempt and further that there were goons on this property. They also stated that the 4<sup>th</sup> Interested Party has been on the suit property since 2005. They averred that the *status quo* on the suit property allowed them to keep utilizing their property. They did not have an issue with the maintenance of a fence on the suit property though they denied being involved in the erection of the same. They justified the fences existence alleging it served to protect their crops from animals. They also denied having made any threats to the plaintiffs and asserted that they have never been subject of police complaints. They also denied having been anywhere near the suit property on 29<sup>th</sup> March, 2021. They clarified that the plaintiffs have never been on land parcel number 45. They also stated that all developments on this parcel of land were undertaken by the 4<sup>th</sup>

Interested Party and his agents. Similarly, they stated that all ploughing and planting on this parcel of land were undertaken by the 4<sup>th</sup> Interested Party.

11. Pursuant to the court's directions of the 22<sup>nd</sup> March 2021, a site visit was undertaken on 23<sup>rd</sup> April, 2021 by the Deputy Registrar to ascertain the status, occupation, use of the suit lands and any subdivisions thereof. This was done in the presence of a number of people being: Mr. Njuguna for the 1<sup>st</sup> plaintiff; Mr. Kesse holding brief for Mr. Chelanga for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs; Mrs. Koech (who acts alongside Mr Chelanga) for the 4<sup>th</sup> plaintiff; Mr. Wafula for the 1<sup>st</sup> defendant; Mr. Kuria for the 4<sup>th</sup> and 5<sup>th</sup> defendant; Mr. Momanyi holding brief for Mr. Nyambegera for the Interested Parties; Isaac Kimutai; Mr. Biwott, the land Registrar Uasin Gishu County; John Mukhwana, the Surveyor Uasin Gishu County; Inspector Odongo, the OCS Eldoret West police station; and, Mr Maritim for the Interested Party in parcel 309. From the report, parcel 44 is occupied by the 1<sup>st</sup> defendant and Mary Chesire, who also claim its ownership. There were several claims from both the 1<sup>st</sup> defendant and the 4<sup>th</sup> plaintiff, each complaining the other had destroyed property on the other's land. Whereas the Chesire family claimed to have been cultivating the land since 1984, the 1<sup>st</sup> defendant asserted that he bought the land from Growel farm in 1996. Concerning parcel number 45, Isaac Kimutai, Kimaiyo Arap Rono and David Kiplagat Koech all claimed to be occupation. There was a heated argument concerning who between the Chesire family and Kimaiyo Arap Rono had constructed a pub which was allegedly burnt down. Concerning parcel number 309, it was occupied by Isaac Kimutai, but David Kiplagat Koech also claimed ownership of it. The owner of the land was deceased but substitution was yet to be done. There were permanent structures on the land, including one that provided accommodation to university students. There was a fence between parcel 45, 309 and 310 that was fairly new and that the access roads were blocked. There were no contentions over parcel 43 and 310. The surveyor filed a letter dated 6<sup>th</sup> May, 2021 wherein he detailed the result of the survey. In the letter, he details the acreage of the various parcels of land subject of this suit and the various fixtures and boundaries thereon. The 1<sup>st</sup> defendant filed an affidavit sworn on the 17<sup>th</sup> May, 2021 clarifying aspects of the report by the Deputy Registrar. The site visit was done with notice and he was actually represented by his advocate. Given that none of the advocates could give facts that were being sought by the visit, it was imperative that each party made an appearance during the visit to clarify the facts.

12. The 3<sup>rd</sup> plaintiff filed his written submissions on the three applications on the 31<sup>st</sup> May, 2021 and 27<sup>th</sup> October, 2021 while the learned counsel for the Interested Parties filed theirs in respect to the 3<sup>rd</sup> plaintiff's motion dated the 31<sup>st</sup> March, 2021 on the 25<sup>th</sup> June, 2021. The counsel for the 4<sup>th</sup> plaintiff filed their submissions dated the 28<sup>th</sup> October, 2021 while counsel for the 4<sup>th</sup> defendants filed their dated the 29<sup>th</sup> October, 2021 and 28<sup>th</sup> October, 2021. The counsel for the 1<sup>st</sup> plaintiff filed theirs dated the 27<sup>th</sup> October, 2021. The counsel for the 1<sup>st</sup> defendant filed three sets of submissions all dated the 29<sup>th</sup> October, 2021 while that for the 2<sup>nd</sup> defendant filed theirs dated the 1<sup>st</sup> November, 2021.

13. The following are the issues for determination by the court;

- (a) *Whether there exist any valid court orders restraining action over the contested parcels of land, and the terms thereof.*
- (b) *Whether any of the Defendants' actions have been in contempt of any of those orders.*
- (c) *Whether the complained of actions, if any, were deliberate and mala fides.*
- (d) *What orders/prayers if any, to grant in respect of each of the applications.*
- (e) *Who pays the costs in each of the applications?*

14. That having given due considerations to the grounds on each of the applications, affidavit evidence, grounds of opposition, written submissions filed, superior courts decisions cited, the reports on the site/locus visit, and the record, the court has come to the following determinations;

(a) That it is unquestionable that courts have the power to sanction willful disobedience of their orders. This power exists by virtue of the legislation including the **Judicature Act, chapter 8 of Laws of Kenya**, the **Environment and Land Court Act No. 19 of 2011**, and also inherently for the proper exercise of judicial power as was appreciated by the High Court in the matter of **Samuel N Mweru and others vs the National Land Commission and 2 others [2020] eKLR**, where Justice Mativo stated that;

***“31. A court without contempt power is not a court.[30] The contempt power (both in its civil and criminal form) is so innate in the concept of jurisdictional authority that a court that could not secure compliance with its own judgments and orders is a contradiction in terms, an “oxymoron.” Contempt power is something regarded as intrinsic to the notion of court; even obvious, I would say. In the common lawyer’s eye, the power of contempt “is inherent in courts, and automatically exists by its very nature.”[31]”***

The court went on further to set out the elements that have to be demonstrated as present to prove contempt of court that: first, the terms of the order have to be demonstrated; second, the knowledge of these terms by the alleged contemnor have to be proven; and third, the failure by the respondent to comply with the terms of the order have to be proven.

(b) That in this matter, the court shall similarly assess the three applications by the plaintiffs for the defendants to among others, be cited with contempt of court in light of the above three elements. In addressing the first element and question for determination in this ruling, the Court finds it imperative to outline the existing orders issued in this case injuncting actions over the disputed parcels of land, that are said to have been disobeyed. The 1<sup>st</sup> plaintiff's application dated the 8<sup>th</sup> February 2021, identifies the order said to have been disobeyed to be that of 29<sup>th</sup> May, 2009. The 4<sup>th</sup> plaintiff's application of 17<sup>th</sup> March 2021, is about the 1<sup>st</sup> Defendant having violated the court orders that the parties maintain 'status quo' over the suit property as extended on 17<sup>th</sup> November, 2020 to

22<sup>nd</sup> March, 2021. The 3<sup>rd</sup> plaintiff's application dated the 31<sup>st</sup> March, 2021 is about the status quo order issued/extended on the 22<sup>nd</sup> March, 2021. Other orders noted by the court on status quo are those dated the 17<sup>th</sup> November 2020, 12<sup>th</sup> October 2020, 8<sup>th</sup> June 2020 and 29<sup>th</sup> April, 2016 as can be ascertained from the annexures to the application of 17<sup>th</sup> March, 2021. The record shows that on the 23<sup>rd</sup> April 2021, the court issued or extended the *status quo* order, and importantly took the liberty of clarifying the terms of the status quo order as follows;

***“THAT the status quo order of 29<sup>th</sup> March 2009 and severally extended only restrained the defendants from “surveying, implementing, mutilating, claiming title and or the 3<sup>rd</sup> defendant from issuing further clearance certificates to anybody and or the Land Registrar from effecting changes to include Block 10 (Growel) 44, 45 and 310 on the R. I. M. and on the ground...” the court wants to clarify that there is nothing in that order allowing any of the parties or their representatives or agents to commit any cognizable offence against the other or suit properties.”***

(c) That from the foregoing, it is clear that the status quo orders referred to on the applications dated the 8<sup>th</sup> February, 2021 and 17<sup>th</sup> March, 2021 are the orders of 29<sup>th</sup> May, 2009. The application dated the 31<sup>st</sup> March 2021, is based on the orders issued/extended on the 22<sup>nd</sup> March 2021, which from the analysis above has its origin from the orders of 29<sup>th</sup> May, 2009. Therefore, with a degree of confidence, the orders which all the three applications complain to have been contravened are the orders of 29<sup>th</sup> May, 2009. All the applications will be analyzed against these orders.

(d) The 1<sup>st</sup> plaintiff's supporting affidavit to the application dated the 8<sup>th</sup> February 2021, has annexed the order of 29<sup>th</sup> May, 2009 which is as reproduced herein below;

**“IT IS HEREBY ORDERED**

***1. This application be certified as urgent and heard ex-parte before service in the first instance.***

***2. A temporary injunction do issue restraining all the defendants from surveying, implementing, mutilating, claiming title and or the 3<sup>rd</sup> defendant from effecting changes to include Block 10 (Growel) 44, 45 and 310 on the R. I. M and on the ground pending the hearing of this application inter-partes.***

***3. Inter-partes hearing on Wednesday 10<sup>th</sup> July 2009.”***

That from the above order, the following observations are discernable. The first one is that the order did not mention “*status quo*” to be maintained. That it is through subsequent extensions of these orders that the term status quo began to be used in reference to the orders of 29<sup>th</sup> May, 2009. That loosely speaking, if the order was to be read to mean there was some status quo to be maintained, then it could only have been concerned with the ‘*surveying, implementing, mutilating, claiming title and effecting changes to title of the suit property*’. Therefore, at the very least, any claims of contempt of court based on this would have to demonstrate that there were acts or attempts at alteration of title or surveying being undertaken by a party/parties to the suit in preparation of alteration of the title to the suit properties. Secondly, the orders of 29<sup>th</sup> May, 2009 were issued at the ex-parte stage, obviously to prevent wastage of the suit properties pending an inter-partes hearing. That after the exparte order was issued, it was incumbent upon the applicants to take steps to prosecute the application inter-partes without undue delay, or risk the order lapsing under the provisions of **Order 40 Rule 6 of the Civil Procedure Rules**, that states: -

***“Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the court orders otherwise.”***

(e) The 1<sup>st</sup> Defendant has denied that he was ever served with the order of 29<sup>th</sup> May, 2009. He has further disputed or denied that the application that gave rise to that interim injunction has been prosecuted. The plaintiffs in all the three applications bore the obligation to prove service of the exparte order, and a notice for interpartes hearing for the application at the very least upon the 1<sup>st</sup> Defendant. That was the only way the burden of proof would have been satisfied as required under **section 108 of the Evidence Act Chapter 80 of Laws of Kenya**. That provision provides that “*the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.*” That by the three plaintiffs failing to tender proof of service of the order and notice for interpartes hearing of that earlier application, their current applications have no foundation to sit on as the orders of the 29<sup>th</sup> May, 2009 lapsed after 12 months. The court is bound by the provisions of **Order 40 Rule 6 of the Civil Procedure Rules**. The orders of 29<sup>th</sup> May, 2009 lapsed on the same date the next year [29<sup>th</sup> May, 2010], since there was no application to extend them, and the court did not exercise its discretion to extend them *suo moto*. That the subsequent orders made after the 29<sup>th</sup> May, 2010 were made upon the court being moved by the various parties and is now apparent that they were made in error. The court has the power to correct an error apparent on the record.

(f) That it is also apparent that subsequent to the 29<sup>th</sup> May, 2010 when the interim order of 29<sup>th</sup> May, 2009 lapsed, the court made reference to the said order severally, ostensibly extending the status quo order made on 29<sup>th</sup> May, 2009. That from the finding above, by the time the various orders extending the status quo were being issued or extended, the exparte order of the 29<sup>th</sup> May, 2009 had lapsed, and there were no orders capable of being extended. The three applications have all failed to establish one essential aspect of applications for contempt of court, that there was a valid order in the first place. That having come to that conclusion, the court find no cause will be served to proceed to determine the other two elements of proof of service or knowledge and disobedience.

(g) Despite the foregoing, the court takes cognizance of the doctrine of *lis pendens*. I cite with approval the explanation of this doctrine by the High Court in **Joseph Tireito v Jacob Kipsugut Arap Langat & 2 others [2018] eKLR**, where the court stated that;

**“Lis pendens is a common law principle, and in addressing the relevance of common law principles within the Kenyan context, Section 3 (1) of the Judicature Act Cap 8 stipulates that, “The jurisdiction of the High Court, the Court of Appeal and of all subordinate courts shall be exercised in conformity with-**

**(a). the Constitution;**

**(b). subject thereto, all other written laws, including the Acts of Parliament of the United Kingdom cited in Part I of the Schedule to this Act, modified in accordance with Part II of that Schedule;**

**(c). subject thereto and so far as those written laws do not extend or apply, the substance of the common law, the doctrines of equity and the statutes of general application in force in England on the 12th August, 1897, and the procedure and practice observed in courts of justice in England at that date:**

**Provided that the said common law, doctrines of equity and statutes of general application shall apply so far only as the circumstances of Kenya and its inhabitants permit and subject to such qualifications as those circumstances may render necessary.”**

That the Black’s Law Dictionary 9th edition, defines *lis pendens* as the jurisdictional, power or control acquired by a court over property while a legal action is pending. That further, Turner L. J, in **Bellamy vs Sabine [1857] 1 De J 566** held as follows: -

**“It is a doctrine of common to the courts both of law and equity, and rests, as I apprehend, upon this jurisdiction, that it would plainly be impossible that any action or suit could be brought to a successful determination, if alienation pendente lite were permitted to prevail. The Plaintiff would be liable in every case to be defeated by the Defendants alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to defeat by the same course of proceedings.”**

And in the case of **Mawji vs US International University & Another [1976] KLR 185**, Madan, J.A. stated thus: -

**“The doctrine of lis pendens under section 52 of TPA is a substantive law of general application. Apart from being in the statute, it is a doctrine equally recognized by common law. It is based on expedience of the court. The doctrine of lis pendens is necessary for final adjudication of the matters before the court and in the general interests of public policy and good effective administration of justice. It therefore overrides, section 23 of the RTA and prohibits a party from giving to others pending the litigation rights to the property in dispute so as to prejudice the other...”**

In the same case it was observed inter alia that: -

**“Every man is presumed to be attentive to what passes in the courts of justice of the State or sovereignty where he resides. Therefore, purchase made of a property actually in litigation pendente lite for a valuable consideration and without any express or implied notice in point of fact affects the purchaser in the same manner as if he had notice and will accordingly be bound by the judgment or decree in the suit.”**

(h) That as shown above, the doctrine clearly injuncts parties to a dispute from alienating the suits subject matter, by granting rights to third parties over the suit property. In this case, it is unarguable that the 1<sup>st</sup> defendant has acted in a manner afoul of this doctrine. By his own admission in his affidavit of 18<sup>th</sup> March 2021, he caused the parcel number 44 to be subdivided into parcel numbers 538–551 in 2011. The record confirms this suit was filed in May, 2009. Further, by his own admission in the same affidavit, he sold some of the parcels that is 541 and 544 subdivided from parcel 44 to third parties known as **Micah Kipkoech Ngeno** and **Isaac Kiptarus Mutai**. The 4<sup>th</sup> plaintiff in his affidavit of 18<sup>th</sup> March, 2021 has annexed copies of the sale agreements that he alleges the 1<sup>st</sup> defendant used to offer the illegally subdivided portions of land for sale. The agreement concerns property described as **Kiplombe/ Kiplombe Block 10 (Growel) 541 and 544**. These are clearly portions resulting from the subdivision of **Kiplombe/ Kiplombe Block 10 (Growel) 44** which forms part of the suit properties. The 1<sup>st</sup> defendant action of selling the two parcels of the suit property was undoubtedly aimed at alienating the parcels and to keep or hide them from the court’s reach. These actions clearly purport to grant rights over the suit property to third parties during the pendency of the suit. This runs afoul of the *lis pendens* doctrine. The justification given by the 1<sup>st</sup> defendant that he sold the parcels as he is a retired civil servant and therefore old, is not sufficient excuse and will not be condoned by the court as it amounts to contempt.

15. The court is empowered to punish for contempt of court orders. The 1<sup>st</sup> defendant has acted in contempt and should be sanctioned in addition to appropriate orders being issued to preserve the suit properties as the suit is heard and determined. Towards this, the court orders as follows;

(i) That the 1<sup>st</sup> defendant is found to be in contempt of court and fined Kshs.200,000.00 **[two hundred thousand shillings]** to be paid in seven (7) days, and in default, warrant of his arrest and committal to serve six (6) months imprisonment to issue.

(ii) That the Land Registrar Uasin Gishu **[4<sup>th</sup> defendant]** is hereby directed to rectify the register under **section 80 of the Land Registration Act No. 3 of 2012** by cancelling all transfers on all the parcels subdivided from Kiplombe/Kiplombe/ Block10 (Growel) 44, that were done after 2009, and restore ownership to the name of Joseph Kimitei Kwambai **[1<sup>st</sup> defendant]**.

(iii) That an inhibition order in terms of **section 68 of the Registration of Land Act No. 3 of 2012** do issue and registered by the Land Registrar **[4<sup>th</sup> Defendant]** in respect of all the parcels subdivided from Kiplombe/Kiplombe/Block 10 (Growel) 44, to be in

*force until this suit is heard and determined.*

*(iv) All the three applications are hereby dismissed with each party bearing their own costs.*

It is so ordered.

**DATED AND VIRTUALLY DELIVERED THIS 15<sup>TH</sup> DAY OF DECEMBER, 2021.**

**S. M. KIBUNJA**

**ENVIRONMENT AND LAND COURT JUDGE**

**IN THE PRESENCE OF;**

**PLAINTIFFS: 3<sup>RD</sup> PLAINTIFF - PRESENT**

**DEFENDANTS: ABSENT**

**INTERESTED PARTIES: ABSENT**

**COUNSEL: MR. NJUGUNA FOR 1<sup>ST</sup> PLAINTIFF AND HOLDING BRIEF FOR KOECH FOR 4<sup>TH</sup> PLAINTIFF.**

**MR. WAFULA FOR 1<sup>ST</sup> DEFENDANT**

**ONIALA: COURT ASSISTANT**