



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA

ELC NO.108 OF 2015

ISAAC ANYULA KHATETE.....PLAINTIFF

VERSUS

- 1. WILSON FRANCIS ONJUNJU**
- 2. CHRISPINUS ODHIAMBO OLUOCH**
- 3. THE LAND REGISTRAR KAKAMEGA.....DEFENDANTS**
- 4. THE DISTRICT SURVEYOR**

RULING

[1] The appellant brought an application dated 27th May 2015 praying for injunctive orders against the 1st and 2nd defendants, their agents and servants or anyone acting on their behalf from interfering with boundary features of land Butso/so/Shikoti/3366 pending the hearing of the application and the suit.

[2] The applicant had alleged that the 1st and 2nd respondents had interfered with the boundary features and that his efforts to stop them had not been heeded. He stated that he would suffer irreparable loss if the 1st and 2nd defendants were not stopped pending the hearing of the application and the suit herein.

[3] This application was allowed by the court on 14/10/2015 after the 1st and 2nd respondents failed to file any grounds of opposition or affidavit in reply.

[4] The applicant then filed application on 6/11/2015 stating that the respondents had disobeyed the court orders of 14/10/2015 in that they have proceeded to interfere with the boundary features of Butso/so/Shikoti/3366. In the applicant's verifying affidavit he said that the 1st and 2nd respondents have disobeyed the court order despite being personally served. He does not state how and when the order was disobeyed. The applicant also annexed the court order dated 27/10/2015 and issued on 14th October 2015. There is no penal notice. The affidavit of service by one Everest Anogore Mwanzi stated that he received a hearing notice dated 6/11/2015 and an order issued on 14/10/2015 and served on the Land Registrar Kakamega and District Surveyor, the wife of 1st defendant and the wife of the 2nd defendant with those documents. There was no personal service on the 1st and 2nd respondents.

[5] I heard this application on 20/1/16. The applicant argues that the orders of the court ought to be respected. He says he served the order on the respondents on 27/11/2015. He says that in spite of that service, the respondents went ahead and destroyed the boundary features. He alleges that he reported the matter to the police at Kakamega vide OB 26/25/12/2015 and that is when he filed the application dated 6/11/2015.

[6] The first respondent denied that he has ever interfered with the plaintiff's land and/or boundary. He alleged that the applicant herein does not recognize the boundary of his land Butsotso/Shikoti/2763. That he claims that the respondent's land is part of his land. He completely denied ever having been served by the applicant. He said he was served two weeks before the hearing hereof with the restrictive order. He stated that he was in Busia Court on 14/12/2015 and there was no order at all. He alleged that there was no evidence that any boundary features were destroyed at all.

[7] The 2nd respondent denied ever destroying any boundary features. He said that he has lived in the land parcel Butsotso/Shikoti/2763 for 13 years. He averred that the land belonged to his brother the 1st respondent. That when he first went to the land in the year 2001, the applicant demanded that the 1st respondent do move the trees on the common boundary. That the 1st defendant removed the said trees. He stated that they were served with the orders of 14/10/2015. He stated that they had not destroyed any boundary features at all. He also alleged that the applicant did not show the court the alleged destroyed boundary features.

[8] Having considered, the claim by the applicant and the response by the respondents, I am satisfied that there was no penal notice served to the respondents. The only order served on the respondents was the court order of 14/10/2015. The respondents deny ever having disobeyed the said order. There was no evidence tendered to the court that the boundary features of the applicant's land were destroyed after the order of 14/10/2015. Indeed the court order of 14/10/2015 was not served on the respondents personally. It was allegedly served on their wives. This was substituted service. The same was not sanctioned by the court. If the order and the penal notice thereof were not served on the respondents, what order did the respondents disobey giving rise to contempt of court?

I am unable to allow this application. The same is dismissed with cost to the respondents.

It is so ordered.

Dated at Bungoma this 9th day of March 2016

S.MUKUNYA

JUDGE