



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KITALE

CIVIL CASE NO. 3 OF 2009

REUBEN NDARA.....PLAINTIFF

VERSUS

1. HELLEN CHEBET

2. MAIBA CHEBOSI.....DEFENDANTS

R U L I N G

1. The first defendant/applicant filed a notice of motion dated 15/10/2014 in which she seeks to have the plaintiff/Respondent committed to Civil Jail for a period not exceeding six months for disobeying an order of the court issued on 12/7/2011 directing that the status quo, be maintained. The applicant contends that the respondent cut down her 17 eucalyptus trees and harvested her maize crop which were on her plot No. 666 at Kitalale Settlement Scheme Phase II.

2. The applicant contends that the respondent trespassed into her plot in August 2014 and cut down the 17 eucalyptus trees and harvested her maize. She reported the incident to the police who advised her that she does an assessment of the maize and cut trees. The applicant further contends that the respondent was in court when the order maintaining status quo was given.

3. The respondent has opposed the applicant's application through replying affidavit sworn on 15/12/2014. The respondent denies that he disobeyed the court order given on 12/7/2011. He contends that he extracted the order and served it upon the local police and area chief so that he could not be blamed later on for going against it. He states that he obtained the relevant permits before cutting down the trees which were on his land being Plot No. 822 at Kitalale Settlement School Phase II. He contends that he was allowed to cut down the trees after the forest officers confirmed that the trees were on his land.

4. In October, 2014, the respondent was summoned to the police station where he was informed that the applicant had lodged a complaint against him on allegations that he had harvested her maize and cut down her trees. He was released on cash bail pending investigations. The respondent went back to the police station armed with necessary documents. Statements were recorded from witnesses. On 21/11/2014 the respondent went back to the police station. The OCS perused the file and informed him that he had found that there was no case against him. His cash bail was returned to him. He contends that it is after the dismissal of the applicant's complaint that the applicant came and filed this application for contempt.

5. I have carefully gone through the applicant's application as well as the replying affidavit of the respondent and the submissions by counsel for the parties. The Plaintiff/Respondent had filed a case

against the applicant herein and one Maiba Chebosi. The respondent was seeking a declaration that he is the sole owner of 10 acres comprised in Plot No. 822 at Kitalale Settlement Scheme Phase II. He also sought for an injunction restraining the defendants from interfering with his 10 acres.

6. On 15/4/2009 the plaintiff/respondent filed an application for temporary injunction restraining the defendants from interfering with Plot 822 Kitalale Settlement Scheme Phase II until conclusion of the suit. The plaintiff was granted temporary orders of injunction on 16/4/2009 pending inter-partes hearing within 14 days. The interim orders were extended on 29/4/2009 until 1/7/2009 when the application was set for hearing inter-parties. The interim orders lapsed and on 7/2/2011 the plaintiff filed an application seeking to have the interim orders of injunction granted on 15/4/2009 reinstated.

7. On 12/7/2011 counsel for the parties herein agreed to withdraw the applications of 15/4/2009 and 7/2/2011 to pave way for hearing of the main suit. It was then agreed that the status quo in respect of the suit premises be maintained. This is the order the applicant is complaining that it has been violated by the respondent. It is difficult to figure out what the status quo was on the ground because the same was not explained to the court. The plaintiff/respondent had filed a claim for 10 acres of land. He was contending that the defendants did not have any land at Kitalale Settlement Scheme Phase II. The defendants were on the other hand contending that it is the plaintiff who had encroached on to their land namely Plot 666 and 667 at Kitalale Settlement Scheme Phase II respectively.

8. When the order for maintenance of status quo was given on 12/7/2011 there was no surveyor who had gone to the ground to ascertain the claims of the plaintiff and the defendants. The surveyor went to the ground pursuant to the court order of 26/2/2012. The surveyor compiled a report which was filed in court on 9/10/2012. The surveyor found out that the plaintiff was owner of Plot No. 822 which was 4.8 acres, the first defendant (applicant herein) was owner of Plot 666 which is 2.5 acres and the second defendant was owner of Plot 667 which is 2.5 acres. It was found that the plaintiff (the respondent herein) was claiming that his plot 822 covers Plot 666 and 667. The surveyor found that the plaintiff had settled on plot No. 822 and 667.

9. The order of 12/7/2011 stated that the status quo in respect of the suit premises be maintained. It is not clear what was to be maintained. Was it that the plaintiff/respondent was to continue occupying the 10 acres which he was claiming? It is difficult to punish the respondent for breach of an order which was not specific. The suit premises referred to in the order is in reference to Plot 822 Kitalale Settlement Scheme which the respondent claims was 10 acres.

10. Assuming that the status quo referred to in the order of 12/7/2011 was meant to confine each party to their respective plots, there is no evidence on the part of the applicant that the trees which were felled by the respondent and the harvested maize were from her plot No. 666. The respondent has demonstrated that when the applicant lodged her complaint against him, the matter was investigated and he was found innocent. There was no evidence or document availed by the applicant to show that the trees were cut from her portion of land or the harvested maize was from her portion of land. It is therefore difficult to find that the respondent has committed any act of contempt against the court order. Should there be evidence that the cut trees and harvested maize were from the applicant's portion, the applicant will be at liberty to claim any damages resulting therefrom. As for now, there is no evidence of breach of any court order. The upshot of this is that the applicant's application is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this 11th day of February, 2015.

E. OBAGA

JUDGE

In the presence of M/S Arunga for Plaintiff/Respondent and Applicant in person. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

11/2/2015