

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 103 OF 2017

EDWARD SHAVANJI ANGWE.....PLAINTIFF/RESPONDENT

VERSUS

MALAKI AKHAMWA MAKOMERE

GLADYS CHITAI

**EVERLYNE BWOYA.....DEFENDANTS/
APPLICANTS**

RULING

The application is dated 12th February 2020 and is brought under order 40 rules 3 & 4 of the Civil Procedure Rules seeking the following orders;

1. That the honourable court be pleased to punish the plaintiff/respondent for disobeying the court orders issued on the 9th day of May, 2019, as provided for in law.
2. That the costs of this application be provided for.

It is based on the grounds that the plaintiff/respondent made an application to court and the honourable court issued an order to maintain the status quo pending the hearing and determination of the case. That at the time the court issued the order of status quo the plaintiff/respondent was staying in the house built in the 2nd applicants portion of land while the 2nd applicant was cultivating the land. That the 3rd defendant/applicant was also cultivating her entire portion of land at the time the order of status quo was issued by the court. That on the 28th day of December, 2019 the plaintiff/respondent went against the order of status quo by cultivating and or ploughing the 2nd and 3rd defendant/applicant portions of land. That the plaintiff/respondent has committed contempt of the court orders issued on the 9th day of May, 2019 upon his own application. That in the above circumstances the 2nd and 3rd defendant/applicants pray that the plaintiff/respondent be punished for disobeying the court orders as provided for in law. The respondent submitted that at the time the orders of 9th May, 2019, were specific that status quo be maintained he was in occupation and use of the suit land herein. That he has been cultivating the suit land and occupying it since 1971 quietly and the applicants herein came and forcefully started cultivating it after this honourable court had issued orders on status quo. That to avoid breach of peace, he could not prevent them from cultivating the whole suit land up to his doorstep. That prior to the issuance of orders on status quo by this court they were not in occupation and/or use of the suit land.

This court has considered the application and the submissions therein. The applicants submitted that on the 28th day of December, 2019 the plaintiff/respondent went against the order of status quo by cultivating and or ploughing the 2nd and 3rd defendant/applicant portions of land. That the plaintiff/respondent has committed contempt of the court orders issued on the 9th day of May, 2019 upon his own application. The respondent submitted that at the time the orders of 9th May, 2019, he was in occupation and use of the suit land herein. That he has been cultivating the suit land and occupying it since 1971 quietly and the applicants herein came and forcefully started cultivating it after this honourable court had issued orders on status quo. This is one man's word against another and the court can only make a determination wants the matter goes to full hearing. The parties are advised to take an early hearing date in this matter. This application is not merited and is dismissed. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 27TH OCTOBER 2020.

N.A. MATHEKA

JUDGE