

REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

Civil Suit 28 of 2012

AUGUSTINE JUMA WANGILA.....PLAINTIFF/APPLICANT

~VRS~

CHARLES MUCHELE MURAMBI.....DEFENDANT/RESPONDENT

RULING

The Plaintiff seeks that the Defendant be arrested and committed to civil jail for not more than six months and also that his property be attached and sold for disobeying a valid court order. The order in question was issued on 18/3/2012 and extended on 29/3/2012. The extracted order read as follows:

“ 1. That the Respondent’s servants, agents or anybody else acting through him be restrained from entering a portion of land especially 1.50 Ha. land parcel no. W. Bukusu/S.Mateka/4095.”

The order was obtained *ex-parte* order on 14/3/2012 and actually issued on the same day. It followed a suit and an application. The Plaintiff’s claim was that he was the registered proprietor of the suit land but that on 11/3/2012 the Defendant had without any legal basis or claim encroached on the suit same, destroyed its boundary and cultivated part of it. An order of permanent injunction was sought. The suit was filed along with a motion seeking that the Respondent’s servants, agents and all those acting under him be restrained from entering the suit land.

The present motion is supported by an affidavit in which the Plaintiff alleges that the extracted order was served on the Defendant on 18/3/2012 and that the order was endorsed with a penal notice. On 29/3/2012 the application came for *inter-partes* hearing but did not proceed as the Defendant had not filed a replying affidavit. The order was extended to 9/5/2012 for the hearing of the application. It was deponed that on 23/4/2012 the Plaintiff went to the suit land to plough. He had a tractor and a driver. The Defendant and his two sons, however, chased him and the tractor driver. The incident was reported to Mateka A.P Camp. The extended order had been served on the Defendant on 5/4/2012. The Plaintiff asks that the Defendant and his two sons be punished for disobeying the court orders.

The Defendant filed grounds of opposition saying that there was no order capable of being extended; the application was incompetent, bad in law and otherwise an abuse of the process of the court; the application had no chance of success; and that it had been brought in bad faith with the aim of delaying him from reaping the fruits of the parcel of land. Since the Defendant did not file an affidavit in response, the matters deponed to in the supporting affidavit were not challenged and will be accepted as proof of the contempt. I accept that the Plaintiff obtained an injunction order which, together with a penal notice were served on the Defendant who with his two sons defied it. Quite unfortunately the two sons were not named in the supporting affidavit. The court cannot be moved to punish unknown persons. Had they been named, it would have been incumbent upon the Plaintiff to serve them with the application so that they be heard before any action is taken against them.

Regarding the Defendant, the order was not directed at him but at his servants, agents and all those acting under him. The injunction did not restrain him from doing anything in respect of the land, or at all. However, his servants and his sons who entered the piece of land with a tractor to plough, in disobedience of the court order, were acting on his behalf and for his benefit. The affidavit says he was present and he was the one who brought these people. He had been served with the order which was in

respect of the parcel he went to plough. The law is that anyone who is aware of court order has to obey it. I find that the allegation of contempt against the Defendant has been proved. He is found guilty. It is directed that he attends the court on 11/7/2012 to show cause why he should not be punished as is required by law. Costs shall be to the Plaintiff.

Dated, signed and delivered at Bungoma this 9th day of July 2012.

A. O. MUCHELULE
JUDGE