



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 42 OF 2015

RICHARD SATIA & PARTNERS.....1ST PLAINTIFF/APPLICANT

JESTIMORE SIMWENYI.....2ND PLAINTIFF/APPLICANT

VERSUS

SAMSON SICHANGI.....1ST DEFENDANT/RESPONDENT

EMMANUEL CHONGE SICHANGI.....2ND DEFENDANT/RESPONDENT

RASMI WASILWA KICHOTI.....3RD DEFENDANT/RESPONDENT

MOHAMMED WEKESA.....4TH DEFENDANT/RESPONDENT

TOM SIRENGO.....5TH DEFENDANT/RESPONDENT

WILLIAM KIRWA.....6TH DEFENDANT/RESPONDENT

RONALD SICHANGI.....7TH DEFENDANT/RESPONDENT

NICK SICHANGI.....8TH DEFENDANT/RESPONDENT

JULIUS TIRIKOI.....9TH DEFENDANT/RESPONDENT

DAVIS BARASA.....10TH DEFENDANT/RESPONDENT

RULING

[NOTICE OF MOTION DATED 21ST JANUARY, 2020]

1. The Plaintiffs filed the Motion dated 21st January, 2020 seeking for **Emmanuel Chonge Sichangi, Rasmi Wasilwa Kichoti, Mohammed Wekesa, Tom Sirengo, William Kirwa, Ronald Sichangi, Nick Sichangi, Julius Tirikoi, Moses Busheidichi and Divas Barasa**, the Respondents, to show cause why they should not be detained in civil jail for a period of six months or more for blatantly disobeying the eviction order issued on the 23rd July, 2014. They also pray for the O.C.P.D. or O.C.S, Endeless Police Station to ensure the compliance of any order issued and costs. The application is based on the seven (7) grounds on its face and is supported by the supporting and further affidavits sworn by **Wilson Walunywa Simwenyi**, a legal representative of the estate of Jestimore Simwenyi, the 2nd Plaintiff, on the 21st January, 2020 and 25th February, 2020. That it is the Plaintiffs' case that the Court issued eviction order on the 23rd July, 2014 which was executed on the 11th September, 2019 and Respondents were removed from the suit land known as parcel No. 5335/24 Endeless. That the Respondents have re-entered onto the suit land and hence this application. That the Respondents' attempts through other Courts in Nakuru and Kitale to get orders to remain on the land have failed.

2. The application is opposed by the Respondents through the replying affidavit sworn by **Emmanuel Sichangi Chonge**, the 2nd Respondent, on his own behalf, and on behalf of the other respondents on 3rd February, 2020. That it is the Respondents' case that they were never evicted from the suit land. That there exists *status quo* orders issued in **Kitale ELC No. 100 of 2018** on the 4th December, 2018. That the

Respondents have been in possession of the suit land pursuant to the decree issued on 17th August, 2007 in Kitale Senior Principal Magistrate Land Case No. 14 of 2003, and the status quo order in the ELC Kitale case referred to earlier. That the annexed ruling of 28th March, 2019 in Kitale ELC No. 100 of 2018 shows the matter is still pending, and these proceedings should be stayed pending its determination thereof.

3. That following the directions issued on the 26th February, 2020 and 12th May 2020, the learned Counsel for the Respondents filed their written submissions dated the 13th July, 2020.

4. The following are the issues for determinations by the Court;

(a) Whether the Applicants have proved that the Respondents are in disobedience of Court order, and if so, what sanction to issue?

(b) Who pays the costs of the application?

5. The Court has carefully considered the grounds on the Motion, the affidavit evidence, the submissions by Counsel for the Respondents, the record and come to the following conclusions;

(a) That these proceedings were commenced as ***Kakamega Hccc Suit No. 73 of 1984***, and later by consent transferred to High Court Eldoret to be consolidated with Eldoret Hccc No. Suit No. 97 of 1988 on the 24th June, 1991. That the matter was then registered as Eldoret Hccc Suit No. 141 of 1991 and subsequently as Eldoret ELC No. 42 of 2015. That the initial parties were **Jestimore Simwenyi Vs Samson Gichangi** as seen in the Plaintiff filed on 3rd September, 1984. That following the amended plaintiff of 13th October 1987, M/s Richard Satia & Partners was added as the 1st Plaintiff and Jestimore Simwenyi became the 2nd Plaintiff. The Defendant did not change.

(b) That the Court's judgment delivered on 12th May, 1995 by Aganyanya J, as he then was, was successfully appealed against by the Plaintiffs in ***C.A.C.A. No. 164 of 1995*** as seen in the judgment delivered on 14th March, 1997. That since then, there have been several applications by various persons and various eviction orders issued.

(c) That while the Applicants have in their application dated 21st January 2020 listed on the heading ten (10) Defendants/Respondents, the order they seek in prayer (b) is meant to only affect the 2nd to 10th Respondents. The 2nd to 10th Respondents have in their submissions pointed out that they were not parties to the suit and it is not clear how they were enjoined. That issue has not been responded to by the Applicants. That though the Court has seen the Motion by Wilson Walunywa Simwenyi and Robinson Nawasaka dated 19th March, 2014 seeking to be substituted for the 2nd Plaintiff on the strength of letters of Administration and *colligenda bona* issued in Kitale High Court Succession Cause No. 49 of 2003, there is no similar application to substitute Samson Sichangi, (1st Defendant) who is allegedly deceased. That substitution and or enjoining of parties is a legal process and must be done in accordance with the laid down legal provisions. That in the absence of evidence or confirmation whether the Respondents have been legally enjoined as parties, then the Court has doubts as to whether they were notified or made aware of the orders issued in this suit, including the eviction order reportedly carried out on the 11th September, 2019.

(d) That the suit property ***L. R. No. 5335/24 Endebess*** in this suit is the same subject matter in Kitale ELC No. 100 of 2018 which the Respondents have indicated is pending and has status quo order in force. That deposition has not been challenged, and in view of the nature of the sanction sought of committing the Respondents to civil jail, the Court finds the Applicants have not proved to the standard required that the Respondents have disobeyed that Court order.

(e) That the learned Counsel representing the parties should take instructions on whether this matter should be transferred to Kitale Environment and Land Court, where the other matter is pending to avoid a situation where contradicting orders are issued over the same land.

(f) That as the Applicants have failed in their application, they will pay the Respondents' costs.

6. That in view of the foregoing, the court finds no merits in the application dated the 21st January, 2020 and is dismissed with costs.

Orders accordingly.

Delivered virtually and signed at Eldoret this 7th day of October, 2020.

S. M. KIBUNJA

JUDGE

In the presence of:

Plaintiffs: None.

Defendants/Respondents: None.

Counsel: M/s Kibichy for Plaintiffs.

Dr. Chebii for 2nd to 10th Defendants.

Court Assistant: Christine

and the ruling is to be transmitted digitally by the Deputy Registrar to the Counsel on record through their e-mail addresses.