



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 385 OF 2013

[Formerly Eldoret Hccc No. 835 of 2013]

FLORENTINA KIMOI KIMUTAI.....1ST PLAINTIFF

JOEL KIPROTICH KIMUTAI.....2ND PLAINTIFF

VERSUS

FRANCIS CHUMA.....DEFENDANT

RULING

On the 27.3.2014, the parties agreed that the status quo be maintained thus the defendant do continue occupying a portion that he has been occupying comprising of about 2 acres which is ploughed, a homestead and a grazing area. The consent was adopted by the court and signed by both parties. By application dated 7.4.2015, the defendant came to court complaining that the plaintiff had refused to comply with the court order made on 27.3.2014. He claims that the 2nd plaintiff has now prevented the defendant from ploughing the two acres mentioned in the order, a portion he has always been ploughing claiming that it is now his cattle grazing area.

The 2nd plaintiff's action amounts to disobedience of the court's order and is intended to lower the dignity of the court and derail the course of justice. The 2nd plaintiff is in contempt of court and ought to be punished accordingly. That court orders are not made in vain but they are meant to be respected by all persons including the 2nd plaintiff. That all attempts to make the 2nd plaintiff obey the order has been in vain rendering this application necessary. That the 2nd plaintiff's actions will deprive the defendant his source of food and livelihood.

In the supporting affidavit of Francis Kipkorir Kiplalang alias Francis Chuma, it is stated that by the defendant that the plaintiffs sought injunctive orders against him. That on 27.3.2014, upon hearing the application and considering the nature of his defence, the court made an order requiring that status quo obtaining on the suit land be maintained.

The order specifically allowed him to continue occupying the section of the suit land that he has been occupying comprising of two acres ploughed, a homestead and a grazing area and that after the order was made, he ploughed the land in the 2014 season. That however, the year 2015, the 2nd plaintiff prevented him from ploughing his two acres prompting him to write a letter to him through his advocates.

That on 27.3.2015, he made an attempt to plough the land after hiring a tractor for that purpose from one Moses Kiyai but the 2nd plaintiff forcefully prevented the ploughing from being done alleging that he was to use the portion of land to graze his cattle. The 2nd plaintiff's actions are in disobedience of the court order, amounts to taking the law in own hands and is a recipe for anarchy if not appropriately punished.

The 2nd plaintiff intends to evict him from the parcel of land, a feat he tried with the application but which the court refused to grant but allowed him to continue utilizing the land until the case is determined. The 2nd plaintiff's disobedience is continuing and will prevent him from getting food and livelihood from the land that is rightfully his. He prays that the application be allowed and 2nd plaintiff be sanctioned appropriately by arrest and committed in jail so as to maintain the dignity and authority of the court. The court orders are not made in vain but are to be obeyed by all including the 2nd plaintiff.

Mr. Timothy Kipkoge states that he is the son of the defendant named in this suit. That he is well versed with the issues in this suit particularly on the utilization of the land. That he is aware that the defendant has always ploughed a portion measuring 2 acres on the suit land next to where their homestead is situated. That he is also aware of the orders made by the court with the consent of all parties allowing the defendant to plough two acres and to continue living on the land until the case is determined.

The defendant has made attempts to plough the 2 acres of land but the 2nd plaintiff has prevented him from doing so. That on 27.3.2015, the

2nd plaintiff turned away a tractor owned by Moses Kiyai which we had hired to plough the land saying he will now use the land as his grazing land.

The 2nd plaintiff's is in disobedience of the court order made on 27.3.2014 and therefore needs to be punished for disobeying the court order. That he makes the affidavit in verification of the fact that the 2nd plaintiff has indeed prevented the defendant from utilizing the land by use of force and threats contrary to the orders of this court.

I have not seen a replying affidavit to the application dated 7.4.2015 and therefore, the allegations thereon are not controverted.

The defendant filed another application on 25.5.2017 dated on the same date claiming that the plaintiff was still in disobedience of the court order dated 27.3.2014 and issued on 17.4.2014. The application is supported by the affidavit of Francis Kipkorir Kiplalang whose gist is that the 2nd plaintiff has gone ahead and erected fences around the 2 acres and has prevented the applicant from ploughing and has put up sheep pens and brought goats to the land. The plaintiff has fenced around the house and destroyed the defendant's sheep pen. The defendant has annexed photos of the fencing.

The 2nd plaintiff's response is that the applicant has not established the prerequisite for contempt of court as no definite dates have been given and that the matters raised are 6 months old hence time barred by section virtue of section 34 of the contempt of Court Act No. 46 of 2016. The respondent states that the order was injunctive in nature and therefore lapsed after 12 months by dint of Order 40 Rule 6 of the Court Procedure Rules, 2010. He states that the applicant has not cited the proper provision of law. He is not aware of any beacons erected by himself.

I have considered the application, supporting affidavit and submissions of the parties and do find that the court order made on 27.3.2015 was clear and unambiguous that the status quo be maintained and that the defendant to utilize 2 acres that he had ploughed. The defendant in the application dated 7.4.2015 alleged that the plaintiff fenced off the two acres which facts is not controverted. The replying affidavit is not in respect of the application dated 7.4.2015. Though the motion does not indicate the land parcel, the parties herein know that the land in dispute is L. R. No. Kiplombe/Kuinet Block 8(Kaplegetet)/7. The order of the court is clear and unambiguous.

The contempt of Court Act No. 46 of 2016 cannot apply in this case as law does not apply in retrospect as the first application was filed on the 7.4.2015 before the law was enacted. The Act was assented to on 23.12.2016 and the date of commencement was 13.1.2017.

I do find the 2nd plaintiff willfully refused to comply with the court order made on 27.3.2014 and therefore undermined the dignity and authority of the court by failing to follow the direction of the court. By failing to do so, he failed to observe and respect due process of the law.

For avoidance of doubt, the 2nd application dated 25.5.2017 is time barred having been filed out of time and the same is dismissed with costs. The 1st application dated 7.4.2015 succeeds. The 2nd plaintiff to restore the status quo as at 27.3.2017.

Having found the 2nd plaintiff in contempt, I do commit the 2nd plaintiff to a jail term of 2 months or a fine of Kshs.100,000. Costs of the applications to 2nd plaintiff.

Orders accordingly.

Dated and delivered at Eldoret this 17th day of January, 2019.

A. OMBWAYO

JUDGE