

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 155 OF 2017

LILIAN CHEPKORIR LELEI.....PLAINTIFF

VERSUS

RICHARD KIPCHIRCHIR NYANGO.....DEFENDANT

RULING

The defendant has come to court by application dated 30.5.2018 praying for orders that the respondent be punished for being in contempt of this Honourable court orders issued on 14th March, 2018. That upon the respondent being found to be in contempt of the court order, she be committed to civil jail for six (6) months or such period as the Honourable court may deem appropriate in the circumstances or her property if any be attached and sold or she be ordered to pay such fine as the court may deem appropriate and or she be committed to civil jail and fined at the same time.

The application is based on grounds that on the 14th March, 2018 this court issued a restraining order against any further construction in the suit land. That the defendant's advocate and the defendant were duly served on 16th March, 2018. That the respondent was personally served again on the 17th March, 2018. That the plaintiff/respondent has blatantly disobeyed the court order. That the plaintiff/respondent is undermining the authority of this court. That the plaintiff/respondent must submit to the rule of law. That the plaintiff/respondent is on a mission to forcefully establish herself in the defendant's parcel of land.

I have considered the supporting affidavit and replying affidavit and also find that on 14.3.2018, this court issued orders that the plaintiff be restrained from putting up any structure or further construction on the suit property and ploughing the same until hearing on 20.4.2018. On the 20.4.2018, the suit did not proceed for hearing because of rival applications. The rival applications were slated for hearing on 27.4.2018. The court issued orders that there be no further construction or planting on the suit property until 27.4.2018. On the 27.4.2018, the matter was adjourned to 30.5.2018.

On 20.5.2018, the parties agreed to maintain status quo and proceed to the hearing of the main suit. The plaintiff was allowed to possess one acre of the land. The defendant was allowed to possess 6.5 acres. The plaintiff was ordered not to engage in any act of wastage or destruction on the one acre in dispute. The Deputy Registrar was to visit the suit land to confirm that the plaintiff resides on the same. This order was reviewed immediately by consent and the applications were to be heard. The application dated 14.3.2018 was heard on 31.5.2018. On that application, I do find that the defendant was duly served in Mosoriot area. The Process Server was accompanied by the plaintiff who is a neighbor to the defendant. I do dismiss the application dated 14.3.2018.

On the application dated 30.5.2018, I do find that the photograph "C" evidence adduced is not reliable as the same is not dated. It is not clear who took the photographs and how they were processed. It is not clear how the photos were generated, stored and communicated.

I do find no tangible evidence to punish the plaintiff for contempt. Application is dismissed. Costs in the cause.

Dated and delivered at Eldoret this 11th day of April, 2019.

A.OMBWAYO

JUDGE