

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 46 OF 2018 (OS)

NAOMI CHEPKERING BITOK.....APPLICANT

VERSUS

ENOCK KIPKIRONG BITOK.....1ST RESPONDENT

AMOS KIBET BITOK.....2ND RESPONDENT

SAMMY KIPKORIR BITOK.....3RD RESPONDENT

RULING

There are two applications on record in this matter. The first application is dated 25th April, 2019 wherein the plaintiff/applicant prays that the court does review or set aside the orders delivered on the 8th April, 2019 pending the hearing and determination of the main suit. That the costs of the application be borne by the respondent.

The application is supported by the affidavit of Naomi Chepkering Bitok and grounds therein whose gist is that there is an error or mistake as there is a replying affidavit on record and yet the court found that there was no replying affidavit.

I have seen the annexed replying affidavit and do agree that there is an error on the face of record and therefore, I do review my finding that the plaintiff/respondent did not file a replying affidavit. I have considered the replying affidavit and do find that construction of a pit latrine cannot be said to be a health hazard. I have already ordered that the parties to utilize the land half equally and therefore, I will not review that decision.

Utilization of land includes putting up temporary structures and toilet. I do not find grounds to review the order on utilization. Moreover, I do not find grounds to review the order allowing the defendants to construct a bathroom and pit latrine however, I do find grounds for review of the order for temporary structure as a home and store on their share of the land as per the court order dated 6th March, 2018. I do order that the temporary structure be used as a servant quarters and be limited to 3 rooms.

In respect of the application dated 28th May, 2019, I do find that the applicant has not satisfied the court that the plaintiff/respondent is in contempt of the orders of the court. I do decline to grant the orders sought. There will be no order as to costs.

Dated and delivered at Eldoret this 28th day of June, 2019.

A. OMBWAYO

JUDGE