



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CAUSE NO. 24 OF 2018

MOITA WOMEN GROUP (*suing thro' its officials*)

NOLKILEKU ENE MERUMU LATON &

NAREYIO ENE NTUKUSOI.....PLAINTIFF/APPLICANT

-VERSUS-

KENNEDY SANING'O TOME.....1ST RESPONDENT

JUSTINE NYABERI OMWOYO.....2ND RESPONDENT

THE C.E.O. TRANS MARA SUGAR CO. LTD.....3RD RESPONDENT

JULIUS TOME.....4TH RESPONDENT

RULING

By a Notice of Motion dated 16th February, 2018 brought under Section 3, 4, 5 and 28 of the Contempt of Court Act No. 46 of 2016 and Section 1A,3A,63(e) of the Civil Procedure Act the Applicant sought for orders that the Respondents be found guilty of contempt of court of the Judgement and decree issued by this court on 13th March, 2017 and they be committed to civil jail and pay a fine not exceeding kshs. 200,000/-.

The Applicant further sought for an order of mandatory injunction directing the Respondents to remove cane seedlings planted by them on LR NO. TRANS MARA/MOITA/312.

Upon filing of the above application the 2nd Respondent raised a Preliminary Objection on points of law on the grounds that he was not a party to the suit and was never enjoined as a party and that the suit having been finalized and judgement entered and with no review made he cannot be named as a party to a suit that he was not previously a party to.

The 4th Respondent also raised a preliminary objection to the effect that he was not a party to the suit. That Judgement was entered and further that the decree and Judgment of the aforesaid suit was not served upon him and the orders which were allegedly disobeyed were not attached to the instant application and further he does not reside in the suit parcel land nor does he have any interest on the said land.

When the Notice of Motion dated 16th February, 2018 came up for hearing, I directed that for a matter to proceed, the court ought to first hear, determine and dispose off the preliminary objection filed in court on 26th September, 2018.

I have read the Notice of Preliminary Objection and the submissions made by counsel. It is now settled what constitutes a preliminary objection on law as stated in the case of Mukisa Biscuits Ltd on a point when heard will settle the entire dispute between the parties.

In the instant case both the 2nd and 4th Respondents have complained that they were not a party to the suit that existed between the plaintiff/applicant and the respondents and they were never served with the orders of the court that were issued on 13th March, 2017 the threshold to be considered as such. The points raised are facts that are being disputed that if heard and considered will determine the issue in dispute and I thus dismiss the preliminary objection and hence they cannot be held to account for.

Having considered the preliminary objection raised and the submissions made, it is my finding that the same do not constitute what amounts

to a preliminary objection on points of law and does not meet points raised by the 2nd and 4th Defendants accordingly.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **30TH** day of **July, 2019**

Mohammed Noor Kullow

Judge

30/7/19

In the presence of:

N/A for the parties and their advocates

CA:Chuma/Kimiriny