



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 341 OF 2017

RAMADHAN ASMAN MUKONYI.....PLAINTIFF

VERSUS

MOHAMMED HUSSEIN

ANTHONY OKELLO OLOO

LANDS REGISTRAR, COUNTY OF KAKAMEGA

BROWNTONIC COMPANY LIMITED.....DEFENDANTS

RULING

The application is dated 13th August 2019 and is brought under order 40 rule 3 and order 50 rule 1 of the Civil Procedure Rules, 2010 and Section 3A of the Civil Procedure Act Cap 21 Laws of Kenya seeking the following orders:-

1. That this application be certified as urgent and the same be heard on priority basis.
2. That an order of committal to be made against Anthony Okello Aloo, to prison for such period as this honourable court may deem fit and just in that he, the said Anthony Okello Aloo, has disobeyed the order made herein by this honourable court on the 10th day of July, 2018 inter alia.

(a) That the plaintiff and the 2nd defendant to maintain status quo as regard L.R. No. South Wanga/Lureko/2821, to wit, that the 2nd defendant shall not access or interfere with the plaintiff's use of L.R. No. South Wanga/Lureko/2821 pending final determination of the suit.

It is based on the affidavit of Zainabu Ateli Hussein and on grounds that, the 2nd defendant were on 10th July, 2018 ordered to maintain status quo as regards L.R. No. South Wanga/Lureko/2821, to wit, that the 2nd defendant shall not access or interfere with the plaintiff's use of L.R. No. South Wanga/Lureko/2821 pending final determination of the suit. The 2nd defendant has in blatant disregard of the said orders entered onto the said land parcel and specifically the portion used by the plaintiff and ploughed the same with intent of taking over its use. The actions of the 2nd defendant are aimed at occasioning a breach of peace as against the existing court orders. The 2nd defendant while admitting knowledge of the restraining consent orders has sworn before the officer in charge of station, Mumias police station to continue with such disobedience alleging that he is the title holder.

The respondent submitted that, as shown by the certificate of title to Plot 2821 which is registered in his name, the said parcel of land measures approximately 12.05 Ha (30 acres). Attached as exhibit marked 'A001' is a copy of the said certificate of title. That the deceased plaintiff annexed an agreement dated the 22nd day of August, 2013 to his list of documents by which he alleged to have purchased a portion of land measuring 7.29 Ha from Plot 2821 and the said agreement is annexed hereto as exhibit 'A002'. That by the time he acquired plot 2821 on the 9th day of March, 2017 the deceased plaintiff was in use of a part of the parcel of land which he claimed to have bought from the 1st defendant and he therefore took possession of the balance of the land which he has been farming food crops such as maize and vegetables to feed the student population of St. Joseph's High School Mumias which borders plot 2821 and of which he is a co-director. That it is in the backdrop of the foregoing that the deceased plaintiff and him agreed to have the status quo maintained, i.e. each party was to continue using the portion of land in plot 2821 under his control and possession pending the outcome of the suit. That immediately the substituted plaintiff replaced the deceased plaintiff in these proceedings, she attempted to stop him from continuing with farming of the food crops in the portion of land under his control alleging that she had come across a court order restricting him from accessing any portion of plot 2821 and consequently reported him to the Mumias Police Station with having breached a court order. That the police officers visited

plot 2821 (which has a clear demarcation between the deceased plaintiff's portion of land and mine) and perused the contents of the consent order before coming to the conclusion that there was absolutely no breach of the orders. That the substituted plaintiff and her current advocate on record having not been a party to the consent order would not understand the intrigues that went into coming up with the consent order hence the unwarranted motion to commit him to civil jail.

This court has considered the application and the submissions therein. It is on record that a consent was entered between the parties on the 10th July 2018 and the same has not been vacated. The respondent is ordered to respect the said consent unless it is vacated by this court. I find this application is merited and I grant the following orders;

1. That the plaintiff and the 2nd defendant to maintain status quo as regard L.R. No. South Wanga/Lureko/2821, to wit, that the 2nd defendant shall not access or interfere with the plaintiff's use of L.R. No. South Wanga/Lureko/2821 pending final determination of the suit.
2. Costs of this application to the plaintiff

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 27TH NOVEMBER 2019.

N.A. MATHEKA

JUDGE