



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC NO. 100 OF 2018 (O.S)

MUYUMBA WATITA

ENOS BARAZA

JAMES TARA & 49 OTHERS.....PLAINTIFFS

VERSUS

JOANNES SATIA (Administrator of the Estate of

RICHARD SATIA (DECEASED).....1ST DEFENDANT

BEATRICE INJETE FRANCIS (Administrator of the Estate of

NYONGESA AWELEKHE (DECEASED).....2ND DEFENDANT

NELSON WANYONYI (Administrator of the Estate of

JULIUS MABUSI (DECEASED).....3RD DEFENDANT

JOAB NYONGESA (Administrator of the Estate of

NYONGESA CHAIRO (DECEASED).....4TH DEFENDANT

LONAH NAKHUMICHA KITUI (Administrator of the Estate of

JACKTON SIBOKI (DECEASED).....5TH DEFENDANT

RULING

1. The application dated 20/9/2019 and filed in court on the same date has been brought by the plaintiffs who seek the following orders:-

(a) That service of this application be dispensed with in the first instance.

(b) That this court be pleased to order the attachment of the property of Joannes Satia the 3rd defendant/respondent herein and/or order detention in prison for a term not exceeding six (6) months for disobeying and breaching the order made on 4/12/2018.

(c) That this court be pleased to order the plaintiffs to take possession, contract their houses, plough, plant and otherwise work the 40 acres of land forming part of LR No. 5335/24 situated at Endebes area the subject of the order made on 4/12/2018 notwithstanding that the 1st defendant has destroyed the plaintiffs' houses using the police.

(d) That the OCPD Endebess police station do show cause why he actively partially and unlawfully participated in the demolition of the plaintiffs property without any court order.

(e) That costs of this application be provided for.

2. The application is brought under **Order 40 Rule 3 of the Civil Procedure Rules.**

3. The application is supported by the affidavit of one Emmanuel S. Chonghe the 5th applicant, sworn on **20/9/2019**. That affidavit reiterates the same matters set out in the grounds at the bottom of the application.

4. The grounds upon which the application is made are that the 1st defendant acted in breach of the orders of court by destroying the plaintiffs' houses despite orders issued by the court on **4/12/2018**, and that his actions are highly prejudicial to the plaintiffs' cause of action herein.

5. In response to application dated **20/9/2019** the 1st defendant filed replying affidavit dated **26/9/2019** His response is that he is not in any breach of any order of the court as he was not served with any order by the applicants; that he never destroyed the plaintiffs houses; that the eviction was carried out by police officers; that he is wrongly sued on the matter; that the land in question is owned by five families and the disputed area of 40 acres is within the land occupied by persons other than his own family and is located at least 2 kilometers away from his parcel; that the dispute over 40 acres does not involve his family; that the eviction orders implemented on **11/9/2019** arose in **Nakuru HCCC No. 141 of 1991, Nakuru HCCC No. 164 of 1993 and Eldoret ELC No. 42 of 2015** and were obtained by persons other than the respondent; that the orders made on **27/11/2018** merely stated that the *status quo* be maintained which is ambiguous and does not disclose which portion measuring 40 acres is in dispute.

6. The plaintiffs filed their submission on **30/9/2019**. The defendant filed their submissions on **8/10/2019**. I have considered the application, the response and the submissions.

7. The issues that arise for determination are as follows:

(a) Whether the 1st defendant is in contempt of orders of this court

(b) What orders should issue?

(a) Whether the 1st defendant is in contempt of orders of this court

8. Was there a court order in place? Attached to the application is an order issued on **4/12/2018** in this matter. The substantive part of that order relied by the plaintiff states as follows:

“Status quo be maintained.”

9. There was therefore a court order in place.

10. The second issue that arises is whether the 1st defendant is guilty of invading the suit land together with the police officers and destroying the plaintiffs' houses and rendering them homeless.

11. According to the deponent of the supporting affidavit the 1st respondent is aware of the above court order and the same was served on him amongst other persons.

12. Has the applicant proved knowledge of the order on the part of the 1st defendant? There is no affidavit of service of the order upon the 1st defendant on the record. A person served with an order is deemed to know the contents thereof and be liable for punitive action in contempt proceedings if he is established to have violated the terms of the order.

13. In the present case since no affidavit of service of the order was annexed to the application then this court must seek other evidence of knowledge of order on the part of the respondent from the record.

14. **Paragraph 5** of the supporting affidavit avers that going by the contents of the affidavit sworn by the 1st defendant on **5/4/2019** the respondent had knowledge of the order. That alleged affidavit is not made part of the annexures to the deponent's supporting affidavit. However I have perused the record in this matter and found an affidavit sworn by the 1st respondent on **5/4/2019** which was filed on **29/7/2019**. That affidavit is in response to a notice of motion dated **12/11/2018** in this matter. It raises numerous issues in respect of this matter including “*res judicata*”. However upon my perusal of that affidavit, I find that it does not disclose any express admission of the existence of the order in question.

15. The proceedings of **27/11/2018** show that Mr. Omboto appeared for all the defendants on that day and submitted that the originating summons is *res judicata*. He was therefore present as at the time the *status quo* order was issued.

16. The eviction from the suit land is alleged to have occurred on **11/9/2019**.

17. The applicant's only dilemma in the current application is that numerous persons were involved as plaintiffs only one is sought to be cited for contempt. The police were also said to have been involved in the eviction. There is no response to the allegation by the 1st defendant that he was not shown to have been involved in the eviction. As for the police, they cannot be issued with notice to show cause as sought

unless they have been found guilty of contempt.

18. The respondent has demonstrated that numerous other persons have an interest in the suit land. He has also been pointed out the family that is alleged to own the land claimed by the applicants. Those allegations have not been countered by way of any supplementary affidavit in the instant application. The applicants having failed to present any direct evidence of involvement of the 1st defendant in the eviction, this court cannot assume that he was so involved and therefore the application for orders against him must fail.

(b) What orders should issue?

19. The upshot of the above is that the application dated 20/9/2019 has no merit and the same is dismissed with costs.

Dated, signed and delivered at Kitale on this 13th day of November, 2019.

MWANGI NJOROGE

JUDGE

13/11/2019

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Onyancha holding brief for Omboto for the applicants

N/A for the respondents

COURT

Ruling delivered in open court at 2.50 p.m.

MWANGI NJOROGE

JUDGE

13/11/2019.