



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**PETITION NO. 5 OF 2017**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF THE FUNDAMENTAL  
RIGHTS AND OR FREEDOMS UNDER ARTICLES 20(1), 21(1),  
10, 40, 50 AND 64 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF : THE REGISTERED LAND ACT CAP 300(Now Repealed)**

**AND**

**IN THE MATTER OF: THE LAND REGISTRATION ACT, 2012 AND THE LAND ACT 2012**

**AND**

**IN THE MATTER OF: THE LAND TITLE KAJIADO/KAPUTIEI – SOUTH/1915**

**BETWEEN**

**LENTEI OLE KISERIAN.....PETITIONER**

**VERSUS**

**THE DISTRICT LAND REGISTRAR, KAJIADO.....1<sup>ST</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**THE NKAMA GROUP RANCH LIMITED.....3<sup>RD</sup> RESPONDENT**

**AND**

**JOSEPH MOISASI.....1<sup>ST</sup> INTERESTED PARTY**

**DAVID KOIN NTOOIKA.....2<sup>ND</sup> INTERESTED PARTY**

**PARTINO OLE MOISASI.....3<sup>RD</sup> INTERESTED PARTY**

**IN THE MATTER OF: Section 5 of the Judicature Act Cap 8 Laws of Kenya**

**IN THE MATTER OF: Order 52 Rule 2 of the Supreme Court of England**

**IN THE MATTER: Disobedience of a Court Order made by this**

Honourable Court on 30<sup>th</sup> October, 2014 and 22<sup>nd</sup> January, 2015

IN THE MATTER OF : An application by LANTEI OLE KISERAIN

for an order for committal for contempt of court against

i. Joseph Moisasi

ii. David Koin Topika

iii. Partimo ole Moisasi

#### RULING

The application before Court is the Notice of Motion dated the 24<sup>th</sup> April, 2017 brought pursuant to the provisions of section 3, 3A, 34, (3), 63 (e ) Civil Procedure Act and Section 5(1) and (2) Judicature Act of the Rules of the Supreme Court of England. The application is premised upon the statutory statement and the verifying affidavit of LANTEI OLE KISERIAN. The Petitioner claims that the Interested parties have disobeyed the orders of the court and continued to interfere with the suit land by cutting trees, burning charcoal and even dug a well. . Further that the interested parties are arrogant and reckless and the provincial administration have declined to assist him.

The Application is opposed by the Interested Parties with the 1<sup>st</sup> Interested Party filing a replying affidavit where he confirms that the Court issued an order of status quo dated the 30<sup>th</sup> October, 2014 and 22<sup>nd</sup> January, 2015 and these was to apply to all the parties. He denied engaging in acts to violate the court order as they are law abiding citizens and insists it is the Petitioner who has been cutting down trees for purposes of burning charcoal and sold several bags. He contends that they reported the matter to the Deputy County Commissioner's office so that the Petitioner could be advised to stop interfering with the suit land. Further, that they have not threatened the Petitioner's life and he is the one who is harassing them. He disputes the photos the Petitioner has annexed claiming they cut down trees.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents opposed the application and filed Grounds of Opposition dated the 8<sup>th</sup> June, 2017 where they deny service of the order for contempt and state that the application fails to meet the threshold required for issuance of contempt.

The Petitioner and the Interested Parties' Counsels submitted on the application, which submissions I have considered.

#### **Analysis and Determination**

The issue for determination is whether the interested parties are in contempt of the orders of the court granted on 30<sup>th</sup> October, 2014 and 22<sup>nd</sup> January, 2015 respectively.

The Petitioner contends that there was an order of status quo issued on 30<sup>th</sup> October, 2014 and 22<sup>nd</sup> January, 2015 respectively, but the third parties have continued to cut down trees, dug a well and also harvest sand. The Petitioner claims the Interested Parties have harassed him and threatened his life. He relied on the case of **Sam Nyamweya & 3 others V. Kenya Premier League Limited & 2 others [2015] eKLR** to support his claim.

The interested parties deny being in contempt of court and dispute the photographs furnished by the Petitioner claiming it does not indicate who was cutting down trees. They further contend that it is the Petitioner who has been harassing them after the order of status quo was granted and he is also cutting down trees on the suit land. The Interested Parties relied on the Cases of **North Tetu Farmers Ltd vs Joseph Nderitu Wanjohi [2016] eKLR** and **Katsuri Limited Vs. Kapurchand Depar Shah [2016] eKLR** to support their claim.

I note the Petition herein was consolidated with Petition No. 24 of 2014 filed by the Interested parties/Respondents Joseph Moisasi, David Koin Topoika and Partimo Ole Moisasi. Further that since there were cross applications for interim injunctions in both files, there was an order of status quo where both parties were directed to maintain peace until the matter is heard and determined.

In the case of **Shimmers Plaza Limited Vs. National Bank of Kenya Ltd (2015) eKLR** the court held as follows: **'the notice of the order is satisfied if the person or his agent can be said to either have been present when the order was given or made; or was notified of its terms by telephone, email or otherwise. In our view, 'otherwise' would mean any other action that can be proved to have facilitated the person having come into knowledge of the terms of the judgement and/or order. This would definitely include a situation where a person is represented in court by counsel. Once the Applicant has proved notice, the Respondent bears an evidential burden in relation to wilfulness and mala fides disobedience.'**

**Section 27(b) of the Contempt of Court Act provides that a person in contempt is who wilfully and without lawful excuse disobeys an order or directions of a superior or subordinate court in the course of the hearing of a proceeding;'**

**Section 28(1) of the Contempt of Court Act provides that save as otherwise expressly provided in this Act or in any other written law, a person who is convicted of contempt of court is liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both.'**

In the case of **North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjohi (2016) eKLR** where Justice Mativo stated that: **' writing on proving the elements of civil contempt, learned authors of the book Contempt in Modern New Zealand have authoritatively stated as**

follows:-

**'there are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases - (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant; (b) the defendant had knowledge of or proper notice of the terms of the order; (c) the defendant has acted in breach of the terms of the order; and (d) the defendant's conduct was deliberate.'**

I note there are three elements that must be proved in contempt proceedings:

- a) Applicant must demonstrate terms of orders
- b) Applicant must demonstrate knowledge of terms by respondent
- c) Applicant must demonstrate failure of respondent to comply with court order

In the instant case, I note the order for status quo was directed to both parties. The Petitioner has not provided adequate proof that the interested Parties are in contempt of the court orders. Further I note the interested parties in October, 2016 even sought the intervention of the Deputy County Commissioner to direct the Petitioner to stop interfering with the suit land. Contempt proceedings are quasi criminal in nature and hence the burden of proof should be on the Petitioner to prove that the same is ongoing. The issues raised in the Petitioner's statement and supporting affidavit are substantive and can only be determined once the Petition is heard.

In the relying on the authorities above, and the Contempt of Court Act, I find that in the current circumstances and with the facts presented, the application fails to meet the threshold required for issuance of contempt. I decline to allow the application dated the 24<sup>th</sup> April, 2017 at this juncture.

Costs will be in the cause

Dated, Signed and Delivered in Kajiado this 30<sup>th</sup> day of January 2018

**CHRISTINE OCHIENG**

**JUDGE**

**Present:**

Cc Mpoye

Kitulu for Applicant

Koin for Interested party