

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 225 OF 2015

ESTHER JESOIMO MISOI.....1ST PLAINTIFF

WILLIAM KIBIWOTT BITOK.....2ND PLAINTIFF

VERSUS

RAEL CHERONO KIROREI

alias RAEL JERONO YEGON.....DEFENDANT

RULING

The application before court is dated 17.11.2015. **Esther Jesoimo Misoi** and **William Kibiwott Bitok** have come to court against **Rael Jerono Kirorei alias Rael Jerono Yegon**, claiming that the respondent with one Laban Kiprono be cited for contempt and be committed to jail for six months and that they should not be heard until they purge the contempt by pulling down the fence hiving off 0.5 acres of land from the 1st plaintiff's parcel of land measuring 2 acres thereof. The application is based on grounds that the plaintiffs have been in possession of the disputed parcel of land since the year 2008 until the filing of the suit on 11.8.2015 and in the Notice of Motion dated 11.8.2015, the court issued an order that the *status quo* be maintained as at the time of filing suit. The respondent and her son were served with the court order, the plaint and Notice of Motion and Summons to enter appearance. When they were served, they erected a semi-permanent house within the portion of land that had been fenced by the defendants.

When the application came up for hearing, the court issued a further order of status quo and fasttracked the hearing of the suit. The defendants have continued to trespass on the parcel of land and therefore the plaintiff prays that the defendants should be cited for contempt in the interest of justice and be jailed for a period not exceeding 6 months. Rael Jerono Yegon, the alleged contemnor filed a replying affidavit stating that she was shocked to be sued for contempt because according to her understanding, the *status quo* was to be maintained thus, no trespassing, alienation, subdivision or transferring the suit parcel and that each party was to carry on with its activities until hearing and determination of the suit. The respondent claims that no one has moved into the land and built a structure. In the further supporting affidavit filed on 3.12.2015, Esther Jerono Yegon reiterates the supporting affidavit earlier filed.

I have considered the application, all supporting affidavits and replying affidavit, rival submissions and do find that the defendants entered the land in dispute and fenced before the filing of this suit. On the filing of the suit, the court issued an order of status quo to be maintained. This meant that the suit property was preserved and therefore, the person in possession was to continue being in possession without changing the status of the land by constructing or doing any act of wastage. This includes any form of disposition. The plaintiff alleges that the defendant has constructed on the parcel of land which is vehemently denied by the defendant but there is no evidence of construction. It was the plaintiff's burden to prove construction on the suit land by annexing a photograph of the structures. There is none. In such case, it is upon the applicant to prove "*beyond*" balance of probabilities but "*not beyond*" reasonable doubt that the respondent is in contempt. The applicant has not discharged this burden. The order of *status quo* was served and thereafter extended by consent and therefore the issue of knowledge of the court order is not contestable. I do find that the application has not discharged the burden. The application is dismissed with costs.

Dated and delivered at Eldoret this 25th day of January, 2018.

A. OMBWAYO

JUDGE