



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**MISCELLANEOUS CASE NO. 13 OF 2017**

**DINAH JEPKEMBOI BARTIOL.....1<sup>ST</sup> APPLICANT**

**JAPHETH KIPTORICH BARTIOL..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**MARTINE S. NGOMAT.....1<sup>ST</sup> RESPONDENT**

**JOSEPH EWOI CHAKAMOYO.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application dated 18/9/2017 seeks an order that his court do find that 1<sup>st</sup> and 2<sup>nd</sup> respondents guilty of contempt of court and that they be committed to civil jail for a period of 6 months or such other term as the court may deem fit. It is stated at the foot of that application and in the supporting affidavit of the 2<sup>nd</sup> applicant sworn on 18/9/2017 that the court delivered judgment in favour of the applicants in **Kitale ELC No. 39 of 2015** (Consolidated with **Kitale ELC No. 37 of 2015**) which ordered the eviction of the 1<sup>st</sup> respondent from the suit land.

2. However, the 1<sup>st</sup> respondent has since the date of judgment been aware that he is required to vacate the suit land and remove the 2<sup>nd</sup> contemnor and other workers from the suit land yet he has defied the decree of the court by retaining the 2<sup>nd</sup> respondent as his permanent workman to supervise casual workers on the land. Despite summons by the Chief, Kapomboi Location, and a directive by the Chief that the 1<sup>st</sup> respondent should remove the 2<sup>nd</sup> respondent and other workers from the suit land, the 1<sup>st</sup> respondent has refused to do so. On the 8<sup>th</sup> and 9<sup>th</sup> September, 2017 the 2<sup>nd</sup> respondent cut down 600 eucalyptus trees to be ferried away. It is alleged that these acts and omission are intended to demean the court and bring it into disrepute.

3. The issue that arises is whether the respondents are in contempt of court. I have examined the order granted in the judgment dated 31/7/2017. They are:-

**(a) Rescission of the sale agreement dated 27/12/2005.**

**(b) Eviction of the defendant from the suit land.**

**(c) Costs of the suit.**

4. In my view there are no orders there which are so tailored that a claim of contempt of court can ensue therefrom. I must state that the very existence of **Order 22** of the **Civil Procedure Rules** is meant to guarantee that once a judgment creditor obtains judgment, execution of that judgment can be procedurally effected on the judgment debtor. If all suits were to be handled in the manner suggested by this application the civil courts would be clogged with quasi-criminal proceedings that may detract from their performance of their duties of adjudication of civil claims. Nevertheless it is not proper to say that findings of contempt cannot arise from a decree and that the only remedy available is executions; it all depends on the nature of the orders sought, how they have been drafted, and their legal interpretation. In this particular case I find no timelines for compliance stipulated in the judgment. I also find no compulsive orders against the respondents save that they should be evicted. Eviction in its most ordinary meaning implies that the judgment holder has to exert some force which, is allowed by the judgement. I do not see any reason why the refusal to vacate should be twined into a contempt issue while the legal mechanisms under the statutes are available for immediate application by to the applicants. Also the committing of acts of waste on the land should be handled in another suit as the suit that gave rise to judgment sought to be enforced is not competed.

5. Consequently I find no merit in the preliminary objection dated 20/10/2017. I also find no merit in the application dated 18/9/2017 and the same is hereby dismissed with costs to the respondents.

**Dated, signed and delivered at Kitale on this 21<sup>st</sup> day of March, 2018.**

**MWANGI NJOROGI**

**JUDGE**

**21/3/2018**

Coram:

Before - Mwangi Njoroge - Judge

Court Assistant - Picoty

Mr. Bungei holding brief for Kraido for applicant

N/A for the Respondent

**COURT**

Ruling read in open court.

**MWANGI NJOROGI**

**JUDGE**

**21/3/2018**