



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 94 OF 2016**

**JACKSON KIPROTICH KIBOR.....PLAINTIFF**

**VERSUS**

**KIPRUTO ARAP LELEL.....1<sup>ST</sup> DEFENDANT**

**SAMUEL KIPRONO SAMOEI.....2<sup>ND</sup> DEFENDANT**

**TANGUAR ARAP SUGE.....3<sup>RD</sup> DEFENDANT**

**SEREI ARAP LEL NENGIT.....4<sup>TH</sup> DEFENDANT**

**CHELULE KEINO.....5<sup>TH</sup> DEFENDANT**

**WESLEY KIMELI SAMBAI.....6<sup>TH</sup> DEFENDANT**

**WILSON KIPKERING KOGO.....7<sup>TH</sup> DEFENDANT**

**KIPROTICH ARAP KIBIWOTT.....8<sup>TH</sup> DEFENDANT**

**GEDION KIPRUTO CHEMIRON.....9<sup>TH</sup> DEFENDANT**

**THE ATTORNEY GENERAL.....10<sup>TH</sup> DEFENDANT**

**ELKANA KIPLETING KIBOR.....11<sup>TH</sup> DEFENDANT**

**EVANS KIPKOSGEI KIBOR.....12<sup>TH</sup> DEFENDANT**

**EZEKIEL KIPNG'ETICH KIBOR.....13<sup>TH</sup> DEFENDANT**

**ERICK KIPCHUMBA KIBOR.....14<sup>TH</sup> DEFENDANT**

**RAYMOND KIBITOK KIBOR.....15<sup>TH</sup> DEFENDANT**

**KESENCHÉ "B" .....16<sup>TH</sup> DEFENDANT**

**KESENCHÉ "A" .....17<sup>TH</sup> DEFENDANT**

**EDWIN KIPKOECH KIBOR.....18<sup>TH</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR.....19<sup>TH</sup> DEFENDANT**

**THE COUNTY LAND REGISTRAR, UASIN GISHU COUNTY.....20<sup>TH</sup> DEFENDANT**

## RULING

Before me, are two applications dated 13.1.2018 wherein the applicant, Jackson Kiprotich Kibor prays for orders *that a further order of restrain do issue to injunct the 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, and 18<sup>th</sup> defendants/1<sup>st</sup> to 5<sup>th</sup> respondents ELKANA KIPLETING KIBOR 3<sup>rd</sup> respondent, RAYMOND KIBITOK KIBOR 4<sup>th</sup> respondent and MITCHELL CHEBET (on behalf of the late EDWIN KIPKOECH KIBOR) 5<sup>th</sup> respondent by themselves and or through leasees and or contractors and or whosoever from continuing to plough and or arrow and or plant and or use the land parcels L. R. 8300 and L. R. 8301, pending hearing and determination of the suit. Moreover, that the 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 15<sup>th</sup> and 18<sup>th</sup> defendants/respondents be cited for contempt of court in violating court orders given on 24<sup>th</sup> November 2017, with a view to being committed to civil jail for a period of up to 6 months, or a fine or both. That the five (5) defendants/respondents do purge the contempt already committed inclusive of an offer of redress for the contempt committed, including a payment to the applicant/plaintiff plus a written undertaking to abstain from further acts of contempt. A written undertaking to abstain from ploughing and planting any crops on the L. R. 8300 and L. R. 8301, within two (2) days of this honourable court's orders.*

The applicant seeks that for purposes of enforcing court orders, and for purposes of maintaining law and order, the orders made in this case be served on the Uasin Gishu County Commissioner, the O.C.S. Central Police Station Eldoret, Uasin Gishu County and the area Chief.

The application before court is based on grounds and factors that the 5 defendants/respondents are in contempt of court orders issued on 24<sup>th</sup> November, 2017 which inter-alia prohibited ploughing and use of the land parcels L. R. 8300 and L. R. 8301 pending hearing and conclusion of the case. That the order verbatim stated that “...**there will no ploughing and planting of any crop on the suit lands until the suit is heard and determined.**” The Respondents/Defendants have since December 2017 entered the whole 2 parcels and ploughed and arrowed some parts of the parcels constituted in the parcel L.R. 8300 and L.R.8301 after the orders were made and continue in earnest. The applicant has drawn the court's attention to;

**(i) Freezing order of 24<sup>th</sup> November 2017 made after an Application with notice and attendant participation of all parties and participants**

**(ii) Photographs the showing the ploughed parcel, iii. Confirmations by the area chief of the ploughing as at 21<sup>st</sup> December, 2017.**

**(iii) Media reports of the Plaintiff trying to get the help of Kenya Police and the area chief to stop the violation of the court order and seizure of his parcel to no avail.**

**(iv) Relevant documents exhibited in support of an earlier contempt Application for contempt including:**

- a) Status quo order given on 31<sup>st</sup> May, 2016.
- b) Plaintiff's titles
- c) Respondents alleged titles searches
- d) Related police criminal proceedings.

It is claimed by the plaintiff that over 90% of the said parcels L.R. 8300 and L.R. 8301 have always been ploughed by the Plaintiff/Applicant even when status quo orders given on 31<sup>st</sup> May, 2016 were made. The ploughing is done by the said contemnors mainly by themselves and through people to whom they have leased the land to and from whom they have either collected or have been promised payment. It is claimed that the 18<sup>th</sup> Defendant is deceased and is represented as pleaded in these proceedings by Michelle Chebet, who is responsible for the contempt. It remains the Plaintiff's position that the whole land parcels L.R. 8300 and L.R. 8301 belongs and is owned by himself. The plaintiff contends that it is in the interest of justice, fairness, rule of the law and peace if orders are made to punish the contempt and that the orders of stay to the use of LR 8300 and LR 8301 made on 24<sup>th</sup> November, 2017 should be enforced and to conclude the full hearing in time preferably before March, 2018 to avoid a situation where the over 1500 acres constituted in LR 8300 and L.R. 8301 go to waste in 2018 planting season. The Plaintiff has made efforts to report the contempt to the area chief, and Kenya Police to no effect as the police take the sides of the Defendants/respondents. Unless managed, the contempt will definitely be a cause for breach of peace, threats, and violence especially amongst family members. So far, owing to the forceful entry of the parcels LR 8300 and 8301, breach of initial order of status quo, there has been violence and threat of violence and criminal case as amongst family members that include: -

**(i) Criminal case Eldoret Criminal Case No. 1002 of 2017 being a claim that the Plaintiff/Applicant/father threatened to shoot the 13<sup>th</sup> Defendant/Respondent/son. Witnesses in the case include the Plaintiff's son namely Evans Kipkosgei Kibor 12<sup>th</sup> Defendant, Ezekiel Kibor 13<sup>th</sup> Defendant and one P.C Luvembe.**

**(ii) Around February 2017, during planting season, Mr. Elkana Kipleting Kibor, the 11<sup>th</sup> Defendant assaulted Raymond Kibitok Kibor, the 15<sup>th</sup> Defendant and cut off his left-hand ring finger over the use of L.R. 8301 necessitating treatment.**

**(iii) Around October 2017, Elkana Kipleting Kibor the 11<sup>th</sup> Defendant assaulted Evans Kipkosgei Kibor, the 15<sup>th</sup> Defendant/Respondent over access and use of L.R. 8301 hitting him and biting him on the face, shoulder and back necessitating treatment.**

**(iv) Threats and restraints on the Plaintiff from entering and protecting his parcels in December to January 2018.**

According to the plaintiff, if orders on contempt and issues raised herein are admitted to hearing and determined at the earliest possible opportunity, the Defendants/Respondents will suffer no irreparable damage as they will be afforded an opportunity to be heard. In case of delay, the Plaintiff will suffer continued torture, waste of resources, deprivation, and the Court's reputation will continue to dissipate. The fights and violence will have been allowed to continue and to escalate within the court's open sight. The commercial value of the parcel will be seriously compromised. The issues raised are exceedingly urgent and grave. The takeover of the parcels amounts to criminal forceful seizure and criminal robbery of the Plaintiff's property acquired for the value even before all the Respondents were born.

Mr. Raymond Kibitok Kibor filed a replying affidavit stating that the application lacks merit, made in bad faith and an abuse of court process. That he is the registered proprietor of land parcel number **SOY/KAPSANG BLOCK 10(SAMITOI)17**. That on 9<sup>th</sup> October 2017, the Plaintiff filed an application seeking to punish the 12<sup>th</sup> and 13<sup>th</sup> Defendants for alleged contempt of court orders. That on 24<sup>th</sup> November 2017, the learned judge dismissed the said application for lack of merit. That the ruling aforesaid did not directly involve the other parties to the suit. That the order marked JKK1 was not served upon any of the Respondents. The Plaintiff is invited to strict proof to the contrary. That he has perused the proceedings and ruling delivered on 24<sup>th</sup> November, 2017 and have noted that the court orders issued on 31/5/2016 were reviewed temporarily to pave way for hearing and determination of the matter on 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> December, 2017. That the orders were lifted to pave way for determination of the case before the planting season resumes in March, 2018. It was the expectation of the trial judge to have the judgment delivered by end of February 2018. That unfortunately on 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> December, 2017, this matter was not reached as the trial judge was not sitting. In the circumstances, it was presumed that the earlier orders which had been lifted conditionally, would revert automatically.

That as a matter of fact, the Plaintiff, by himself and through his proxies ploughed about 400 acres of the suit land parcel between December, 2017 and January, 2018. That it is hypocritical for the Plaintiff who has blatantly disobeyed the orders aforesaid to accuse them of contempt of court orders yet by conduct of the parties, including the Plaintiff who has himself ploughed on 200 acres, it was implied that the court orders aforesaid had been vacated or had been spent by reason of the fact that the matter was not heard on 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> December, 2017 as earlier contemplated by the court and the parties. That he is informed by his counsel on record which information he verily believes to be true that the court cannot punish for contempt unless the orders are clear and unambiguous. That the Applicant's/Plaintiff's application is fatally incompetent and should be dismissed with costs to the Respondents/Defendants.

On the other hand, in the second application dated 6.3.2018, the 13<sup>th</sup>, 15<sup>th</sup> and 18<sup>th</sup> defendants have applied for an order that the orders issued on 24.11.2017 vacating status quo issued on 4.7.2016 be set aside varied and reviewed and the status quo orders issued on 4.7.2016 be restored pending the hearing and determination of the suit.

The application is based on grounds and facts that on 24<sup>th</sup> November, 2017, while delivering a ruling in an application filed by the plaintiff against the 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> defendants, the learned trial Judge suo moto vacated the status quo orders issued on 4<sup>th</sup> July, 2016 to pave way for expeditious hearing and determination of the suit whereby the trial Judge listed the matter for defence hearing on 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> December, 2017. Due to factors beyond the control of the court and the parties, the matter was not reached for hearing on 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> December, 2017. The matters were listed before court No. 2 which rescheduled the matters for hearing on 28<sup>th</sup> February, 2018 and 1<sup>st</sup> March, 2018. The matter is now due for further hearing on 13<sup>th</sup> April, 2018. In view of the fact that the matter was not heard to conclusion or at all on 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> December, 2017, vacating the status quo orders issued on 4<sup>th</sup> July 2016, it was the expectation of the parties that the orders which had been conditionally lifted would automatically revert in the interest of justice. Conscious of this fact, the plaintiff mobilized tractors and ploughed on about 300 acres of the suit land parcels. It is fair, just and expedient that the orders issued on 24<sup>th</sup> November, 2017 be vacated and the status quo orders issued on 4<sup>th</sup> July, 2016 be restored reinstated pending the hearing and determination of this suit. In the interest of justice, this application ought to be allowed. That land in issue is likely to be exposed to waste and the parties will be greatly prejudiced.

The 11<sup>th</sup>, 12<sup>th</sup> and 14<sup>th</sup> defendants have also filed an application dated 6.3.2018 seeking orders similar to the 13<sup>th</sup>, 15<sup>th</sup> and 18<sup>th</sup> defendants. Moreover, they pray that parcel No. SOY/KAPSANG BLOCK 10(SAMITOI)12, 13 AND 14 be preserved for occupation and use of the 13<sup>th</sup>, 14<sup>th</sup> and 16<sup>th</sup> defendants and parcel No. SOY/KAPSANG BLOCK 10(SAMITOI) 18 and 19 be preserved for use and occupation of the plaintiff.

I have considered the two applications and do find that all parties in this matter have gone ahead and ploughed the disputed parcel of land despite the orders issued on 24/11/2017. This court visited the suit parcel and found that all parties have ploughed the land and some have even planted despite the court order restraining them from ploughing and planting and therefore on preliminary investigation they are all in contempt of the court and should be punished. I do not intend to fine all parties in this matter as it is a family dispute and punishing all parties is likely to escalate the dispute. However, I will not condone any further disobedience of the court orders. I do restate the orders made on 24.11.2017 and for avoidance of doubt, the plaintiff and the defendants are hereby restrained from further ploughing, arrowing or utilizing the suit land in any manner until the suit is heard and determined. I will give the parties consecutive hearing dates. There will be no order as to costs. In essence, the applications for review dated 6.3.2018 are dismissed and the application dated 13<sup>th</sup> January 2018 is allowed partially thus, **no further ploughing and arrowing and utilization of the land by all parties until the hearing and determination of the suit and that the suit be heard on priority basis.**

**Dated and delivered at Eldoret this 27<sup>th</sup> day of April, 2018.**

**A. OMBWAYO**

**JUDGE**