



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 553 OF 2017

LESHAN OLE LETOLUO.....PLAINTIFF

-VERSUS-

HABA HABA INVESTMENT LTD.....1ST DEFENDANT

JAMES OCHENGO ONDUSO.....2ND DEFENDANT

SERAH NJOKI MUNGE.....3RD DEFENDANT

SANKALE OLE OTUNI.....4TH DEFENDANT

LAND REGISTRAR NAROK.....5TH DEFENDANT

RULING

The Application before me is the Plaintiff's/Applicant's application dated 13th December, 2017 brought under order 40 Rule 1, 2 and 3(1) of the Civil Procedure Rules seeking orders that the court finds the 4th Defendant/Respondent has contravened restraining orders issued by the court on 21st September, 2017 that the 4th Respondent ceases any dealings with land parcel No **CIS MARA ILMASHARIANI-MORIJO/1189 TO 1190** and that in the alternative the Respondent be put in Jail for contravening the aforesaid orders.

The Application was supported by the affidavit of Leshan Ole letoluo where he averred and basically expounded on the grounds on which the application was based.

The Respondent opposed the application and filed a replying affidavit.

The Respondent alleged that he was the owner of the suit land and that he neither trespassed on the land and / encroached on the same and no formal complaint was filed against him. He further alleged that contrary to the application averment the suit land was sub-divided prior to the filing of the suit herein and he has been in occupation and possession of the land.

The respondent further contends that he holds a valid title which is a prima facie evidence and thus is protected under the provisions of Article 40 of the Constitution of Kenya. He also stated that he respects the authority and the dignity of the court and has not disobeyed any order.

I have read the application and considered the submissions made by counsel for the applicant and respondent. The issue before me is whether the respondent had disobeyed a lawful order of the court as alleged by the applicant.

It is not disputed by the parties that this court had on 21st September, 2017 restrained the defendant from entering, cultivating and trespassing on the suit parcel of land. What is in contention is whether the Respondent knows that such an order was substantially acted contrary to the say.

From the Application and supporting affidavit it is alleged that the said disobedience is evident when the respondent in company of police officers visited the suit land and placed beacons thereon. No evidence of this fact has been placed before me to show that indeed police officers as the respondent visited the land. The applicant has not stated what police station the said officers came from.

For an application of contempt to succeed, the applicant must proof all the ingredients that constitute the offence of contempt and in view of the above I find that the application lacks merit and the same is hereby dismissed with costs.

Dated, Signed and Delivered in open court at **NAROK** on this **10th** day of **April, 2018**

Mohammed Noor Kullow

Judge

10/4/18

In the presence of:-

CA:Kimiriny

Ms Cheptoo holding brief for Muigai for the Plaintiff

Mr. Kamwaro for 4th defendant

Mr. Kamwaro holding brief for Mr Githui for 1st, 2nd and 3rd respondents