



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 497 OF 2017

FORMERLY KISII ELC NO. 190 OF 2016

JAMES OLOOLKEYAI OLE SERIANI.....PLAINTIFF

-VERSUS-

OLE NKOLIAI.....1ST DEFENDANT

STEPHEN NKOLIAI.....2ND DEFENDANT

DAVID NKOLIAI.....3RD DEFENDANT

NDEGE KIPOS.....4TH DEFENDANT

DAVID MPILEL.....5TH DEFENDANT

RULING

The Application before me is the Notice of Motion dated 2nd May, 2018 in which the applicant seeks for orders of mandatory injunction, enforcement of an order of the court that was issued on 25th July, 2016, to cite the Respondents for contempt and orders for their arrest and committal to Jail for a term not exceeding 6 months and costs of the application.

The application was based on the grounds that the plaintiff is the lawful owner of Land Registration No. Trans Mara/Olomismis/972 and that the Respondents trespassed and interfered with the applicants possession of the land and that on the 25th July, 2016 the applicant filed a suit and an application in which the court issued conservatory orders for the maintenance of status quo in which the Respondent has continuously disregarded and more particularly that on or about the 14th April, 2018 the 3rd Respondent entered upon the suit property and erected a new fence on the suit land and further stopped the Applicant's workers from accessing the land and attending to tree seedlings in thereon and later uprooted the said seedlings.

The Applicant also contends that other than the above the Respondents have denied him the use, occupation and quiet possession of the suit property.

The Application was opposed by the 3rd Respondent who filed a replying affidavit since the Applicant touched on actions that were purportedly done by him. He contends that the intention of the Applicant in the instant case was to subdue him and the Applicant has constantly harassed him. He avers that he did not enter the suit land on 14th April, 2018 as alleged and states that there are unsubstantiated claims as the same are not supported by the affidavit evidence.

When the Application came before me for hearing on the 5th July, 2018 the Respondents and his advocate were absent even though the hearing was taken by consent of the parties on 17th May, 2017 when they appeared before court and in the circumstances counsel for the Applicant proceeded and urged the court to adopt the pleadings that were filed on behalf of the Applicant.

I have read the Application before me and the issues for determination before me is whether there existed an order for the maintenance of the status quo to be maintained and if the Respondents contemptuously disregard and is in breach of those orders and if that in the affirmative should the Applicant be punished for its disobedience.

When the Applicant commenced the suit herein on 30th June, 2016 he filed an application for injunction and the court on the 25th July, 2016 issued an order in the following terms:-

a. There be and is hereby issued an order for the maintenance of the status quo currently obtaining over and in respect of L.R NO. TRANS MARA/OLOMISMIS/972 and more particularly barring and/or prohibiting the Respondents from entering upon, cutting down trees, burning charcoal, grazing or, cultivating, building structure or additional structures, interfering with or in any manner dealing with the LR TRANS MARA OLOMISMIS/972.

From the above it is clear that the order of the court was explicit in its terms to the extent that the Respondents were not to interfere with the suit land pending the hearing and determination of the suit. The Respondent does not deny that he was served with the order but merely states that his interference has not been proven by the Applicant. The 3rd Respondent is the only of the 4 other Respondents that the Application touches on and I don't see the reasons why the Applicant will complain about him alone and let the others. The 3rd Respondent's allegations in my view amounts to mere denials and I therefore find that the 3rd Respondent is in breach of the orders of the honourable court dated 25th July, 2016.

In view of the above therefore, I will allow the Application dated 2nd May, 2018 in terms of prayer 5 of the Application and I direct the OCPD Trans Mara East/West to cause the arrest of the 3rd Respondent DAVID NKOLIAI and produce him before me on or before the 20th day of July, 2018 and show cause why I should not commit him to jail.

Orders accordingly.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **10th** day of **July, 2018**

Mohammed Noor Kullow

Judge

In the presence of:-

Miss Ochwal for the plaintiff

Ms Adala holding brief for Mukoye

CA:Chuma