



**REPUBLIC OF KENYA**

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

**AT ELDORET**

**E & L CASE NO. 381 OF 2015**

**DAVID SONGOK LAGAT.....PLAINTIFF**

**VERSUS**

**SAMSON ATEKA ONYANCHA.....1<sup>ST</sup> DEFENDANT**

**ABIUD ORORA ONYANCHA.....2<sup>ND</sup> DEFENDANT**

**RULING**

The defendants have come to court vide application dated 17.2.2017 praying that the plaintiff be detained in prison for a period of 6 months for disobeying the court order issued on 15.12.2015. Moreover, that the plaintiff's property be attached as security to guarantee compliance with the court order issued on 15.12.2015. The plaintiff/respondent be directed to obey the court order. The application is based on the grounds that the court issued an order of status quo whereby all parties were restrained from using, occupying, cultivating, developing, disposing, transferring, leasing or in other way interfering with the suit property.

According to the applicant, the respondent has disobeyed the court order and have erected a perimeter fence on the property and have cultivated the land for his personal benefit.

The application is supported by the affidavit of Abiud Orora Onyancha who states that he is aware that the plaintiff/respondent instituted this suit against the defendants/applicants claiming ownership of the suit property. That he is aware that the suit is defended and on 15.12.2015, the court issued an order directing that the status quo between the parties relating to the suit property be maintained pending the hearing and determination of this suit in respect of the suit property. That he is informed by his advocates on record that the respective court order inter-alia restrained all the parties from using, occupying, cultivating, developing, disposing off, transferring, leasing and/or in any other way dealing and/or interfering with the suit property.

He claims to be aware that the plaintiff/respondent has arbitrarily disobeyed the respective injunctive order and proceeded to fence and cultivate the suit property for his own personal profit and to the disadvantage of the defendants/respondents.

That he is aware that the plaintiff's/respondent's actions and/or commissions manifestly amount to disobedience of the authority of the law under Order 40 Rule 3 of the Civil Procedure Rules, which is punishable by law.

He is informed by his Advocates on record that it is fair and just that the plaintiff/respondent be henceforth detained in prison for disobeying the court order and/or his properties be attached as security for compliance with the court's directives.

The defendants/applicants shall suffer grave losses and damages in the even the application is not allowed and/or if at all the plaintiff/respondent is not subjected to the due process of the law. The court is legally obligated to punish any party who arbitrarily disobeys a court order.

In the replying affidavit, Mr. David Songok Lagat states that he is aware that on 27.4.2016 when the matter came up for hearing of the defendant's application for injunction and which is alleged to have resulted in the annexed order marked A001, the court in the spirit of the fast tracking the matter ordered that the status quo be maintained pending the hearing and determination of this suit. That he is aware that ever since the aforesaid order was issued he has not utilized and or done anything on the suit land in disobedience of the order of the court or at all since when the order was made he was in possession of the suit land and all the developments that had been done since they are still in place to date without any alteration or any further developments thereto.

That he is a stranger to all the allegations of contempt leveled against him by the applicant and particularly having breached any order of this honourable court. That he has been advised by his advocates on record and which advises he believes to be true that the provisions of Order

40 Rule 3 of the Civil Procedure Rules requiring the depositing of security in court does not apply in the circumstances of this case.

This court sent the Deputy Registrar who visited the site to confirm the status quo and found that there is maize growing on the piece of land, the plaintiff's son one Mr. Cheruiyot Songok who was present did not know who planted the maize which were about knee length on the piece of land. The deputy Registrar found that there is a barbed wire fence around the parcel of land. That 2<sup>nd</sup> defendant did not know who planted the maize. One Denis Mokaya who claimed to be the caretaker informed the Deputy Registrar that he was the one who planted the maize on the instruction of David Songok the plaintiff. That from what the deputy registrar ascertained, the person in use of the land is the plaintiff. There were no buildings nor physical evidence of active living on the land. That from the information of the caretaker, the land was cultivated and maize planted on 5.3.2017.

This court finds that there is enough evidence that the plaintiff fenced the land and planted maize despite the court order prohibiting parties from interfering with the suit land.

***In HADKINSON vs. HADKINSON [1952] 2 ALL ER 562, the English Court of Appeal returned these categorical holdings;***

***“Held (per Somervell and Romer, L.JJ.), that it was the unqualified obligation of every person against, or in respect of whom, an order had been made by a court of competent jurisdiction, to obey it unless and until that order was discharged; that the mother in the present case had not brought herself within any of the exceptions to the general rule which debarred a person in contempt from being heard by the courts whose order he had disobeyed; and that she being in continuing contempt by retaining the infant out of the jurisdiction her appeal could not be heard until she had taken the first and essential step towards purging her contempt by returning the child within the jurisdiction.***

***Held Per Denning L.J, the fact that a party to a cause had disobeyed an order of the court was not of itself a bar to his being heard, but if his disobedience was such that, so long as it continued, it impeded the course of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it might make, then the court might in its discretion refuse to hear him until the impediment was removed. The present case was a good example of a case where the disobedience of the party impeded the course of justice.”***

In the case of **Econet wireless Kenya Limited Vs minister for information & Communication of Kenya & Another**, the court stated as follows;

**“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against or in respect of whom, an order is made by the court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void.”**

Again, in the case of **Teachers Service Commission Vs Kenya National Union of Teachers & 2 others (2013) eKLR Ndolo J** observed that;

**“The reasons why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of Justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding Judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguard the rule of law”**

The judge went further to state;

**“I am of the same persuasion that the reason why power is vested in courts to punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. The law of contempt has evolved over time in order to maintain the supremacy of the law and the respect for law and the respect for law and order. As it was in the time of Chief Justice McKean in 1786 so it is today that courts have a duty to ensure that Citizens bend to the law and not vice versa. Indeed, if respect for law and order never existed, life in society would be but short, brutish and nasty. It is the supremacy of the law and the ultimate administration of justice that is usually under challenge when contempt of court is committed. This is so because, a party who obtains an order from court must be certain that the order will be obeyed by those to whom it is directed. As such, the obedience of a court order is fundamental to the administration of justice and the rule of law. A court order once issued binds all and sundry, the mighty and the lowly equally, without exception. An order is meant to be obeyed and not otherwise.”**

I do find the plaintiff, David Songok Lagat to be in contempt of court by planting maize on the suit land despite the court order. I do fine him Kshs. 100,000, failure of which the plaintiff to serve a jail term of one month. Costs to the defendants. Orders accordingly.

**Dated and delivered at Eldoret this 23<sup>rd</sup> day of October, 2018.**

**A. OMBWAYO**

**JUDGE**