

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 385 OF 2013

FLORENTINA KIMOI KIMUTAI.....1ST PLAINTIFF

JOEL KIPROTICH KIMUTAI.....2ND PLAINTIFF

VERSUS

FRANCIS CHUMA.....DEFENDANT

RULING

The defendant has come to court by way of Notice of Motion dated 8.2.2017 for an order that the 2nd plaintiff, Joel Kiprotich Kimutai be arrested and detained in prison for a period of 6 months for disobedience of court orders made on 27.4.2013 and that in addition or in the alternative, the property of the 2nd plaintiff be attached and that the plaintiff be condemned to pay costs of this application. The application is based on grounds that the court made an order on 27.03.2014 by consent of all parties that the status obtaining on the suit land be maintained particularly that the defendant to continue occupying the section he has been occupying comprising of two acres ploughed, a homestead and a grazing area as an interim measure pending the hearing and determination of the suit. The 2nd plaintiff has now prevented the defendant from ploughing the two acres mentioned in the order, a portion he has always been ploughing claiming that it is now his cattle grazing area. The 2nd plaintiff's action amounts to disobedience of the court's order and is intended to lower the dignity of the court and derail the course of justice. The 2nd plaintiff is in contempt of court and ought to be punished accordingly. The applicant believes that court orders are not made in vain but they are meant to be respected by all persons including the 2nd plaintiff. All attempts to make the 2nd plaintiff obey the order has been in vain rendering this application necessary. The 2nd plaintiff's actions will deprive the defendant his source of food and livelihood.

The application is supported by the affidavit of Francis Kipkorir Kiplalang *alias* Francis Chuma who states that by an application dated 21.3.2014, the plaintiffs made an application seeking injunctive orders against him. That on 27.3.2014, upon hearing the application and considering the nature of his defence, the court made an order requiring that status quo obtaining on the suit land be maintained. That the order specifically allowed him to continue occupying the section of the suit land that he has been occupying comprising of two acres ploughed a homestead and a grazing area. That after the order was made, he ploughed the land in the 2014 season. That however, this year, the 2nd plaintiff has prevented him from ploughing his two acres prompting him to write a letter to him through his advocates. That on 27.3.2015, he made an attempt to plough the land after hiring a tractor for that purpose from one Moses Kiyai but the 2nd plaintiff forcefully prevented the ploughing from being done alleging that he will use the portion of land to graze his cattle. That the 2nd plaintiff's actions are in disobedience of the court order, amounts to taking the law in own hands and is a recipe for anarchy if not appropriately punished. That the 2nd plaintiff intends to evict him from the parcel of land, a feat he tried with the application but which the court refused to grant but allowed him to continue utilizing the land until the case is determined. That the 2nd plaintiff's disobedience is continuing and will prevent him from getting food and livelihood from the land that is rightfully his. That he prays that the application be allowed and 2nd plaintiff be sanctioned appropriately by arrest and committed in jail so as to maintain the dignity and authority of the court. That the court orders are not made in vain but are to be obeyed by all including the 2nd plaintiff.

The application was served upon the respondents and specifically the 2nd plaintiff who failed to file a response hence the same is not opposed. There is a court order which has not been set aside. The evidence on record is not controverted hence the court finds that it is proved by the required standard that that the 2nd plaintiff is in contempt of court and is hereby fined Ksh.50,000 and in default to serve a term of one month in jail. The 2nd plaintiff to continue respecting court orders.

DATED AND DELIVERED AT ELDORET THIS 21ST DAY OF FEBRUARY, 2017.

A. OMBWAYO

JUDGE