



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 349 OF 2014

AZINA CHEPKEMBOI SAID.....PLAINTIFF

VERSUS

NOAH MARTIM TOO.....1ST DEFENDANT

CHRISTOPHER KIPCHOGE BITOK.....2ND DEFENDANT

KIBUTUK ARAP TOO.....3RD DEFENDANT

RULING

The application before court is dated 25.1.2016 brought by Azina Said Chepkemboi. seeking orders that the 1st, 2nd and 3rd defendants *Noah Martim Too*, *Christopher Kipchoge Bitok* and *Kibutok Arap Too* be committed to civil jail or their land be attached. The application is based on grounds that on the 6th January, 2016 the Honourable Court was pleased to issue an exparte order of stay of decree dated 30th November, 2015 and an order dated 16th December, 2015 pending the hearing inter-partes on the 21st January, 2016. The order was served upon the plaintiff’s advocates on 13th January, 2016. That in outright disobedience on the 17th January, 2016, the 1st, 2nd and 3rd defendants started reconstructing on the suit property. That the 1st, 2nd and 3rd defendants/respondents flagrantly refused to obey the orders which were clear and unambiguous. That the 1st, 2nd and 3rd defendants/respondents are reconstructing on the suit property. That court orders must be obeyed at all times. The application is supported by the affidavit of Azina Chepkemboi Soi who states that the defendant filed application dated 30.12.2015 for stay of execution of decree dated 30.11.2015 and order dated 16.12.2015. On 13.1.2016, the defendant served the plaintiff the order dated 8.1.2016. That her advocates on record inform her information she verily believes to be true that the stay order meant that she should wait for inter-partes hearing on the 21st January 2016 before she can move and continue developments on the suit property. That on the 23.12.2015, the defendants were evicted from the suit property and at the time the stay order was issued, she was already in occupation of the suit property preparing to cultivate the land. That despite the defendant herein through their advocates on record having applied before this honourable court an order for stay and this honourable court issuing the said order, the defendants have disobeyed the same order of stay dated 8th January 2016 and have started reconstructing on the suit property. That she took photos on the suit property on 23rd December, 2015 before eviction.

She states that on 21st January 2016, in the company of the police from Kapsabet Police Station, they visited the suit property and found the defendants building a house as annexed copies of photos marked “ACS3”. That in defiance of the court orders dated on 8th January, 2016, the 1st, 2nd and 3rd defendants are reconstructing on the suit property claiming that the court have given them authority to reconstruct.

She is informed by Mr. Benjamin Lulei, the Chief of Kamobo Location which information she verily believes to be true that he was also served with the orders dated 8th January 2016 and he had a meeting with all the three defendants herein and advised them not to reconstruct on the suit property. The defendants had knowledge of the court order and still went on and started constructing on the suit property as a brazen act of defying the court orders. They have displayed utmost contempt for this court and it shows that they will not obey the orders of this court even if further orders are given. According to the applicant, court orders must be obeyed at all times because the Honourable court cannot issue orders in vain.

The 1st, 2nd and 3rd defendants have disobeyed orders dated 18.1.2015, orders which they themselves applied to this honourable court. That she is informed by her advocates on record which information she verily believes to be true that willful disobedience of the court order by the defendants is an affront to the dignity of this court and it is in the interest of justice that the property be attached and they be committed to civil jail for contempt of court.

Benjamin Lulei, the Chief of Kamobo Location within Nandi County states that he is aware of the suit in the High Court, Eldoret Case No. ELC No. 349 of 2014 between the plaintiff and the defendant. That on the 23rd December 2015, the plaintiff in company of the police officers from Kapsabet Police Station evicted the 1st, 2nd and 3rd defendants from LR Nandi/Kamobo/2267 in his presence. That on the 12th January 2016, the 1st, 2nd and 3rd defendants came in his office in the company of another man and served him with an order dated 8th January 2016 and informed him that they are going back to reconstruct on the suit property. That he told the 1st, 2nd and 3rd defendants not to reconstruct on the suit property until the 21st January, 2016 when the case in court was to be heard.

To his surprise while on duty, he passed around L. R. No. Nandi/Kamobo/2267, and saw the defendants reconstructing on the suit property and he warned them to stop but they continued. That the suit property does not belong to the defendants herein but it belongs to the plaintiff herein hence he knows the family's history. That the suit property is in his area of jurisdiction. That he knows the plaintiff herein very well as well as the defendant.

The plaintiff has reported the matter to Kapsabet Police Station on the 20th January, 2016 and was issued with OB No. 52/20/1/2016. That the defendants herein were evicted on the 23rd December, 2015 in his presence. The plaintiff further states that the stay order which was obtained by the defendants was not only affecting her but even the defendants. The defendants were evicted from the suit property under supervision of the Officer Commanding Station, Kapsabet and that no building nor structures were demolished halfway. That after eviction, the defendants came to court and obtained orders for stay of which she is being advised by her advocates on record and information she verily believes to be true that the order for stay meant that she remains in possession of the suit property without doing any other development as the defendants remains evicted. That all the structures shown in an annexure AC3 are structures which the defendant constructed after obtaining an order for stay and the defendants must stop misleading this Honourable court. That the orders for stay which were obtained by the defendants did not affect her only but also affected the defendants. That the defendant since obtaining the order for stay have continuously disobeyed the same orders they obtained themselves thinking that the orders are only against her. That the defendants have and are fencing up the suit property further disobeying orders of stay which they themselves obtained from them.

The defendants have further disobeyed the orders of stay which they themselves obtained before the honourable court by cutting trees on the suit property and covering tree stumps with soil to conceal. That the defendants further are now cultivating on the suit property, harvesting sand from the suit property in disobedience of the orders of stay as she continues to obey the said orders of stay. That she will seek leave of court for this honourable court before the hearing of this application to humbly visit the suit property in order to ascertain the averments of her supporting affidavit and further supporting affidavit.

According to the applicants, the defendants should deposit security for the suit property since she is afraid they may sell to the third party now that they do not obey orders of the Honourable court including orders

that they themselves obtained in this court. That she is informed by her advocates on record which information she verily believes to be true that the transfer of Land Registration No. Nandi/Kamobo/2267 was done in accordance with the law and the defendants are free to access the registry of lands Nandi County to verify the same, Section 10 of Land Registration Act, 2012.

The issue of suit property being transferred to her illegally or fraudulently cannot arise as she visited the Lands Office with her late brother before he died and all the procedures were followed including attending to the Land Control Board, Kapsabet they left the instruments of transfer in the Lands registry, Kapsabet, Nandi County and went back to Mombasa with her brother, Salim Kibet Saidi. That she is advised by her Advocates on record which information she verily believe to be true that Section 43 and 44 of Land Act 2012 and Sections 37, 40, 44(1)(2) (5a, b, c) of the Land Registration Act, 2012 were duly followed. That when she visited the Lands Registry Kapsabet within Nandi County with view of information the Lands Registrar of the death of her brother, Said Kibet he told her the certificate of title was ready for collection.

The defendants through Kibutuk Arap Too states that the defendants' allegations that they were fully evicted from the suit property are totally false as they still in occupation as the eviction orders were partially executed by removing doors from their houses. That they still reside on the remaining houses and tents and have not reconstructed as alleged by the plaintiff. The allegations in paragraph 16, 17, 18 and 19 are totally irrelevant as title was issued after the death of the original allottee, Said Kibet without succession being done as provided by the law. That the transfer was fraudulently done to circumvent HCCC NO. 613 of 2012 which is pending before this court. That the plaintiff has never been in occupation of the said parcel, either before or after the purported partial eviction. That the application therefore, ought to be dismissed for being frivolous, improperly before court and is otherwise an abuse of the court process.

The plaintiff submits that the applicable law is found in Section 63(c) "In order to prevent the ends of justice from being defeated the court may, if it is so prescribed (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold." Order 40, Rule 3(1) states this in case of disobedience or of breach of any terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such persons to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release. The plaintiff argues that the defendants are in breach of the orders of the court made on 8th December 2015 by this court and do not deserve the discretion of the court.

The defendant argues that the orders issued by the court on 8th December 2015 were for stay of execution pending interparte hearing of the application and not an order of injunction. Moreover, that when the order was issued the plaintiff had made a partial eviction of the defendants and therefore the current application is brought before the court prematurely as the defendants are still in possession.

The duty to obey the law by all individuals and institutions is cardinal in the maintenance of rule of law and the due administration of justice. In *Hadkinson –vs- Hadkinson, (1952) ALL ER 567*, Romer, L.J. stated:

"It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a 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 even void. Lord Cottenham, L.C., said in Chuck –vs- Cremer (1) (1 Coop. temp.Cott 342):

"A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid- whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be

affected by it, was plain. He should apply to the court that it might be discharged. As long as it exists it must not be disobeyed.”

Further, the Court of Appeal in *Refrigeration and Kitchen Utensils Ltd. –vs- Gulabchand Popatlal Shah & Another, -Civil Application No.39 of 1990* held,

“ ... It is essential for the maintenance of the rule of law and good order that the authority and dignity of our courts is upheld at all times.”

I have considered the application the supporting affidavit of the plaintiff and the replying affidavits and do find that though it is the duty of each person to obey a court order the order to be obeyed should be clear and unambiguous. The order issued by the court was against the plaintiff and not the defendants and the same was to stay the execution of the decree dated 6th January 2016 and issued on 8th January 2016 pending the hearing and determination of the application inter parte. The order was not for the maintaining of status quo and therefore did not affect the alleged contemnors. I do find that the application is premature and therefore the same is not allowed. Costs in the cause.

DATED AND DELIVERED AT ELDORET ON 10TH DAY OF MARCH, 2017.

ANTONY OMBWAYO

JUDGE