

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

CIVIL SUIT NO. 166 OF 2016

STEPHEN RUTO ROTICH.....PLAINTIFF

VERSUS

SAMWEL K. ELOLIA.....DEFENDANT

RULING

The application herein is dated 27.7.2016 wherein the plaintiff prays that the defendant/respondent who is the alleged contemnor, Samwel K. Elolia be committed to civil jail for such a period as this Honourable court may deem fit for disobeying the orders issued by this Honourable Court on 21st June, 2016 to the effect that plaintiff remains in the suit land herein Sergoit/Elgeyo Border Block 1(Beliomo)159 without any interference from the defendant pending the hearing and determination of the plaintiff application dated 21st June, 2016.

That in the alternative, the properties of Samwel K. Elolia be attached or fined for disobedience and/or breach of the orders issued on 3rd March, 2016 and that this Honourable court be pleased to issue orders reinstating the plaintiff into the suit parcel of land. That the OCS, Kapsoya Police Station to ensure compliance of the orders.

The application is based on grounds that the plaintiff/respondent is in contempt of this court orders issued on 21st June, 2016 and that despite the orders in place, the defendant and his agents proceeded and demolished the plaintiff's house situate at the suit land and further erected a new gate hence preventing the plaintiff from accessing the suit land. The defendant/respondent has erected a new structure despite orders in place and that the plaintiff/respondent has disregarded, ignored or neglected to comply with the foresaid orders. That no prejudice shall be suffered by the defendant if the plaintiff is reinstated into the suit land. That the plaintiff/respondent ought to be committed to civil jail for not more than 6 months on account of contempt. That the court shall also consider to sequester the contemptuous property.

The application is supported by the affidavit of Stephen Ruto Rotich who states that on 20th June 2016, the respondent herein came to his house situate at the parcel of land known as Sergoit/Elgeyo Border Block 1(Beliomo)159 and ordered him to vacate the said property within one day. That he went to his advocates on record, where he instructed them to seek for orders of injunction barring the defendant from evicting him from the suit land and that on 21st June, 2013, his advocates on record obtained orders of injunction restraining the respondents by himself, his servants, or agents from pulling down the fence, house, trespassing onto, transferring, sub dividing, taking possession or in any other way interfering with the plaintiff/applicant's parcel of land known as Sergoit/Elgeyo Border Block 1(Beliomo)159 measuring 5 acres pending hearing and determination of his application of this suit. That in total disregard of the above orders, the defendant/respondent proceeded and demolished his house upon being served with aforementioned orders. That the defendant/respondent demolished his house plus all the other structures therein which included cow shed and chicken house.

The court had on 8th July, 2016 issued orders of status quo which would have enabled him to stay in the suit property without further developments but the defendant/respondent in total disregard of the same proceeded and put up a new structure. That the actions of the defendant/respondent illustrate the kind of bad faith on his part yet he still wants the court to believe that he was not in occupation of the suit property.

In the replying affidavit, the defendant states that at no time did he go to the plaintiff's house and neither was he personally served with any court order restraining him from using his land in any way. That indeed, there is no affidavit of service in the court file herein, neither is there any evidence of service of any court order upon him. That he left Kenya on June 21, 2016, which is the day the alleged order was obtained and there is no way it can be said that he is in contempt of court. That indeed, he had organized and transported the plaintiff to his new abode in Kimumu and he even paid his first rent. That after he left Kenya, the plaintiff purported to file suit against him. That by 8.7.2016, he had already settled in the U.S.A. and it is his workers alone who are on the said land, the plaintiff having been relocated on 20.6.2016. That the alleged occupation of the plaintiff was with his consent, and they subsequently agreed amicably that he leaves his land, which he did.

The plaintiff submits that the defendant was served with the documents including the court order and that the plaintiff has always been in occupation of the suit land. On the issue of contempt of court orders, the plaintiff submits that an order of temporary injunction was issued by the court served but the defendant still evicted the plaintiff. The plaintiff argues that he ought to be reinstated in the suit land.

I have considered the supporting affidavit, replying and supplementary affidavit and do find that the plaintiff has not demonstrated that the order was served upon the defendant who was out of the country and therefore has not discharged the burden of proof as required in contempt matters thus ***"beyond balance of probabilities"*** but below ***"beyond shadow of doubt"***. Moreover, it has not been demonstrated that it was the plaintiff who pulled down the fence, house and took possession of the premises as he had already left the country. The application is dismissed with costs.

DATED AND DELIVERED AT ELDORET THIS 3RD DAY APRIL, 2017.

A.OMBWAYO

JUDGE