

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 190 OF 2014

MUSA CHERUIYOT

CHEPKURUI.....PLAINTIFF

VERSUS

JULIA KAPTUYA

CHIRCHIR.....DEFENDANT

RULING

Musa Cheruiyot Chepkurui (*hereinafter referred to as the applicant*) has come to court against Julia Kaptuya Chirchir hereinafter referred to as the respondent praying that the respondent be punished for contempt of the orders issued on 4.12.2014. That upon the respondent being found to be in contempt of the court order, she be committed to jail for six (6) months or such period as the honourable court may deem appropriate and/or her property be attached and sold or she be ordered to pay such a fine as the court may deem appropriate and/or she be committed to jail and tried at the same time. The applicant prays for costs.

The application is based on grounds that the status quo order was issued by this honourable court 4th December, 2014. On 18th June, 2014, the defendant/respondent by order had been restrained from evicting the plaintiff/applicant and on 4.12.2014, the court ordered maintenance of status quo. The defendant/respondent has blatantly disobeyed the court's order and therefore is undermining the authority of the court. The defendant/respondent is using the police to harass him. The defendant must submit to the rule of law and is on a mission to destroy evidence in this matter.

In the supporting affidavit, the applicant states that on 9.06.2014, he filed the instant suit and on 18.06.2014 obtained an injunctive order against the defendant. That on 4.12.2014, the honourable court issued an order of maintenance of the status quo on the suit land. That the defendant was personally present in court when the 2nd order was issued on 4.12.2014. That the defendant was duly served with the court order which had notice of penal consequences. The defendant is aware of the penal notice as a consequence of disobeying court order and besides the penal notice itself being contained in the order, the defendant was also represented by counsel and could not therefore feign ignorance of the law. That the orders were duly served upon the defendant who is in any case was personally present in court when the 2nd order was issued.

Despite the defendant being aware of the existence of the court order, she has consistently undermined the authority of the court by disobeying the court order thus after issuance of the court order, she went ahead and put up a structure on the suit land. She destroyed his structure thereon on 5.5.2016 while he had travelled to court for the hearing of the matter and hired hooligans to chase him from the land. She has befriended some members of the police force and has used them to harass him and consequently have him charged in the subordinate court at Kabarnet.

On 19.1.2017, the defendant put up further structures on the suit land in utter contempt of the court and that the defendant is adamant in her continued disobedience of court order.

Despite a letter addressed to the defendant's counsel dated 09.1.2017 complaining of the defendant's actions in breach of court orders and urging them to desist from the said contempt, no response has been received.

The respondent in reply states that at the time and since acquisition of her properties, she has been in possession of all her parcels of land. That at the time she had a servant's structure in one of the plots wherein an employee has been living therein for quite some time. The plaintiff herein out of nowhere filed this suit and obtained orders with the intention of changing the status quo in her farms/plots. The allegations of eviction were meant to create an overthrow coup to the advantage of the plaintiff. That immediately on obtaining the said orders, the plaintiff moved to her parcel and attempted to put up a structure therein and destroyed hers. That she did reported pursued and eventually had him arrested and charged wherein he was convicted. Therefore, the truth of the matter is that she has had a structure in her land for quite a long time.

The alleged destruction of his structure is but absurd as what was destroyed was hers wherein he was arrested, charged and convicted. The allegations before court are unfair and oppressive in that the applicant destroys her own structure and sues her for destroying her own structure where he is charged and convicted for destroying and comes before a Judge to allege otherwise is indeed a great mischief. The person in contempt of court is indeed the applicant as the status orders means it remains the way it is but not for him to change it to suit his intent.

I have considered submissions from both parties and do find that the applicant has not discharged is burden of proof that the respondent is in contempt of court as the photos produced do not show when the respondent put up structures on the land and also when she destroyed the plaintiff's structures. The application of this nature should be carefully considered due to the consequences. The burden of proof is slightly above "balance of probabilities" but below "beyond reasonable doubt." In my view, the application does not attain the standard of proof required and is otherwise dismissed with costs.

Dated and delivered at Eldoret this 24th day of November, 2017.

A. OMBWAYO

JUDGE