



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L CASE NO. 493 OF 2013

JANE BARNO.....1ST PLAINTIFF

JACOB KIPSUI.....2ND PLAINTIFF

NICKSON KALYA.....3RD PLAINTIFF

GIDEON KAMAU NG'ANG'A.....4TH PLAINTIFF

EZEKIEL MATEBOR.....5TH PLAINTIFF

BENJAMIN KOECH.....6TH PLAINTIFF

WILLIAM KOBOS CHELAL.....7TH PLAINTIFF

VERSUS

CATHOLIC DIOCESE OF ELDORET TRUSTEES REGISTERED.....1ST DEFENDANT

THE CHIEF LAND REGISTRAR.....2ND DEFENDANT

RULING

The **Catholic Diocese Of Eldoret Trustees Registered** (*hereinafter referred to as 1st defendant*) has brought the application dated 26.5.2015 and filed on the same date praying for orders that the plaintiffs and their agents be arrested and committed to civil jail for being in contempt of the order of this court issued on 20th November, 2013 and order dated 21st February, 2015 pending the hearing and determination of this application *interparte*. That the illegal construction of the fence erected on parcel of land Baringo/Mumberes/455 be pulled down. That any barriers barricading access to the parish house and the locked classroom that the 1st defendants were using to conduct their mass be removed forthwith. That the interim committee be barred from running the school and the appointed Board by the Ministry of Education representing both the 1st defendant as the sponsor and the community do take over the management of the school pending the hearing of this application interparties and the main suit. Which application is based on grounds that the suit land is registered in the name of the 1st defendant/applicants and that the suit land was fully developed by the 1st defendant and the constructions comprise of a school, a cow shed, a parish house and a perimeter fence. The plaintiffs waited until the 1st defendant had completed constructing the school when they have now stormed appointed an illegal committee to run the school without any representation on the part of the sponsor. That they have totally denied the 1st defendant quiet possession since they are barricading the road that leads to access to his parish house and the cow shed. That the plaintiffs have pulled down a fence erected by the 1st defendant and have erected their own fence and continue doing so without regard to the court orders.

The application is supported by the affidavit of the **Most Reverend Dr. Bishop Cornelius Korir** who states he is one of the registered trustees of Catholic Diocese of Eldoret which has been sued as the 1st defendant and he has been authorized by his co trustees to swear this affidavit on his own behalf and on their own behalf. That the suit land is registered in the name of the 1st defendant/applicant and that this Honourable court issued a court order on 20th November, 2013. That the plaintiffs have flouted the court orders despite the fact that they are aware of their existence. That the plaintiffs have continued cultivating the land, spraying chemicals on the suit land, barricaded access to the 1st defendant's parish house and cow shed. That the plaintiff's continue managing the school without a proper school board. The interests of Catholic Church being the sponsor of the school continue being disregarded.

That it is common knowledge that Catholic Church upholds high standard of rule of law and its schools have a reputable image countrywide. That the plaintiffs want to continue reaping where they have never sowed. They are collecting all the school fees in collusion with their agent who is the current principal of the school. That the alleged illegal interim Board of the school is unknown even to the Ministry of Education.

That the Ministry of Education appointed a proper Board of Governors who should run the school and which represented the interest of the 1st defendant but that the proper Board of Governors have been denied to run the school by the plaintiffs.

That the plaintiffs are now pulling down the fence erected by the 1st defendant and continue barricading access to the 1st defendant's parish house, classroom that was being used to conduct mass and access to the cow shed has been denied. That the plaintiffs are likely to evict the 1st defendant from the suit land. That they are praying that the fence be pulled down the cultivated crops be removed and the locked classrooms and barriers erected to deny access to cow sheds and or the parish house be removed. That this application is brought in good faith and without unreasonable delay. That the 1st defendant continues suffering irreparably.

Jacob Kipsui, a resident of Eldama Ravine depones that the court orders issued on 20.11.2013 and annexed as BCK-2 are expressly issued against the defendants including the applicant and not against the plaintiffs. That the court orders issued on 21st February, 2014 and annexed as BCK-3 are not any new orders but an extension of the court orders issued on 20th November, 2013. That it is not practically possible for a party to be in breach of orders that do not issue against that particular party. That indeed it is the applicant who has been engaging in provocative actions as enumerated here below:-

(i) The applicant has been releasing its cows on the land that is occupied by the school and the applicant's cows have several times fed on, trampled on and destroyed the school's crops.

(ii) This led to a meeting between the applicant, the plaintiffs and the local OCS where parties were to enter into a formal agreement with directives on how the applicant's cows could be allowed to graze on specified parts of the school's land but the applicant refused to commit itself unto the agreement.

(iii) The applicant has a huge hall where it could conduct its mass ceremonies but they always insist on crossing onto the school's side and conduct masses on our premises in our absence as the school is unoccupied on Sundays and in the process breaching the existing orders of status quo.

(iv) The plaintiffs closed illegal entry points (panya routes) onto the fence dividing the school's and the applicant's land but has not in any manner crossed over to the applicant's land. If anyone want to access the school, there is a gate which they can use.

(v) The applicant is in control of about 3 acres of the suit land where they have cultivated almost all of it leaving no part to graze their cows and this has contributed to the need for the applicant to keep intruding into the school's land and in the process breaching the order for status quo.

(vi) The plaintiffs have not in any single occasion crossed into the applicant's parcel of land.

The current application is an abuse of the court process and the issues raised therein for determination can only be determined at the main trial. That the plaintiffs/respondents have not done anything that would amount to an injustice let alone contempt of court as can be attested by lack of any material evidence annexed hereto. That the plaintiffs herein have not breached any existing court orders in this matter. There is no evidence that have been annexed in proof of the alleged actions and the applicant is only attempting to hoodwink this Honourable Court to assist the applicant in settling a score against the plaintiffs. The aim of this application is to ensure that the plaintiffs cannot live and/or run the school without constant fear which will directly affect the performance of the school negatively for the applicant's selfish gain. The applicant is further in an attempt to hoodwink this honourable court into determining this matter at an interlocutory stage by raising issues that can only be determined at the trial in its application. The instant application should therefore be dismissed with costs to the plaintiffs.

The 1st defendant have filed a supplementary affidavit deposed by Most Reverend Dr. Bishop Cornelius Korir who states that there are three court orders dated 20.11.2013, 19.12.2013, 21.2.2014 and has specifically deposed that the plaintiffs are in breach of the court order made on 19.12.2013 dated 21.2.2014. The 1st defendant submits that the court has so far issued three court orders dated 20.11.2013, 19.12.2013 and 21.2.2014. The order issued on 20.11.2013 is an order of injunction is issued restraining the defendants from charging, building leasing or otherwise interfering with the suit property namely L.R Baringo/Mumberes/455 pending hearing of the application interpartes. The Order issued on 19th December 2013 was against the plaintiff from ploughing, cultivating, interfering, obstructing, trespassing and or dealing with the suit property. The plaintiffs/respondents submit that the application is an attempt by the 1st defendant to hoodwink the court into handing over the property to the 1st defendant for management. Moreover, that the court orders issued on 20.11.2013 and 21.2.2014 were issued against the 1st defendant and not the plaintiffs.

I have considered the Notice of Motion supporting affidavit, replying affidavit and supplementary affidavits and do find that this honourable court issued orders on 20th November, 2013 whose import was an order for injunction restraining the defendants from charging, building, leasing otherwise interfering with the suit property namely L.R. Baringo/Mumberes/455. On the 19.12.2013, an order was issued by Justice Fred Ochieng restraining the plaintiffs/respondents by themselves, official agents and/or servants from ploughing, cultivating, interfering, obstructing, trespassing and/or dealing with L.R. Baringo/Mumberes/455. The two orders properly construed imply that both parties should keep off the property until the matter is determined.

On the 21.2.2014, the court extended interim orders and urged all parties to respect the interim orders. I do note that there are two interim orders on record as none has been set aside. The 1st defendant submits that the plaintiffs have disobeyed the court order by leasing part of the 1st defendant's 3 acres of L.R. Baringo/Mumberes/455 to strangers who have now cultivated the land suit property namely L.R. Baringo/Mumberes/455 pending hearing and determination of the application interpartes. On the 19.12.2013, the court issued an order restraining the plaintiffs, themselves, official agents and or servants from ploughing, cultivating, interfering, obstructing, trespassing and/or dealing with Baringo/Mumberes/455. The applicant has alleged that the plaintiffs have flouted the court orders by cultivating the land, spraying chemicals on the suit land, barricading access to the 1st defendants' parish house and cow shed and that the plaintiffs continue managing the school without a proper school board and that the interest of the Catholic Church continue to be disregarded. The aforesaid allegations are alleged but not proved. It was not difficult for the applicant to put before court evidence of the lease, cultivation of the land, spraying of chemicals on the suit land and barricading the access to the parish house. In contempt case, the burden of proof lies with he who alleges that there is contempt. However, the standards of proof is above balance of probabilities but not beyond reasonable doubt.

This court finds that the issue of management of the school has not been determined hence this court cannot find that the plaintiffs are running the school without a proper board as this can only be determined after a full hearing and that there are no interim orders on the management of the school. This court observes that the preliminary documents indicate that the school is owned by the Government of

Kenya and therefore the Attorney General should be and is hereby enjoined as an interested party on behalf of the ministry of education.

In the further replying affidavit sworn by Jacob Kipsui, he has annexed copies of photographs showing the school gate and compound. He also annexed a copy of photograph showing the entrance to the 1st defendant's parish showing the gate which is not barricaded and another photo showing the school crops which have not been destroyed. This court further observes that there are two conflicting orders issued against both the plaintiffs and the defendants which were extended on the 21.2.2014 . In view of the above, this court finds that the applicant has not proved contempt as required by law and the application is dismissed with costs.

DATED AND DELIVERED AT ELDORET THIS 26TH DAY OF FEBRUARY, 2016.

ANTONY OMBWAYO

JUDGE