



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 135 OF 2013

KIPKEMBOI KOSGEL.....PLAINTIFF

VERSUS

SAMUEL KIPKOECH.....1ST DEFENDANT

HILLARY KIBITOK.....2ND DEFENDANT

JULIUS KIPROP.....3RD DEFENDANT

BARNABA KIPROTICH.....4TH DEFENDANT

JOSEPHAT KIPTOO.....5TH DEFENDANT

RULING

The plaintiff has come to court by way of Notice of Motion praying that the defendants be committed to civil jail for a term not exceeding six months and an order that the defendants' property be attached for disobeying a court order. The application is based on grounds that he Honourable court issued an order and directed that the status quo on the suit parcel be maintained. The defendants have refused to abide by the court's order and has ploughed the disputed parcel and interfered with the boundary. Court orders are not made in vain and therefore it is necessary that the plaintiff be punished for disobeying the court order. The Honourable court has jurisdiction to punish the plaintiff for being in contempt.

The application is supported by the affidavit of Kipkemboi's Kosgei (plaintiff) who states that he is the registered owner of all that parcel of land known as NANDI/MUTWOT/204 measuring 15.0 hectares and that he is in possession and use of all that parcel of land. That the defendants, their servants, agents and or employees are interfering his parcel of land NANDI/MUTWOT/204 and have trespassed onto the same with an intention of ploughing the same. That the defendants have no claim over the suit land and should be restrained by way of an injunction.

The 1st defendant has sworn a replying affidavit on behalf of the 2nd to 5th defendants stating that the application before court *is malicious* and ought to be dismissed and that the supporting affidavit is sworn on falsehood and innuendo especially paragraphs 3, 4 and 6. That it is not true that they have failed to comply with order of the court as issued on 28th May, 2013, in fact it is the plaintiff/applicant who has continued to flagrantly and with impunity to contravene the said orders to their detriment. That the plaintiff has been leasing out entire part of the suit land for grazing purposes to other people save for 12 acres which he leaves for cultivation. That before the honourable court issued the status quo orders, each of them was, and has continued to cultivating 1 acre only out of the 12 acres of land that he sets out for cultivation until last year's harvest.

That it was at the begging of this year that a stranger who introduced herself as Celestin Koech from Langas within Eldoret town and who gave them her cellphone number as [Particulars Withheld] came and started to ploughing the suit land.

That when they inquired who she was and why she was ploughing the land, she claimed to have leased and paid for 10 of the 12 acres from the plaintiff/applicant herein and that she intended to plough the 10 acres she had leased and paid for and proceeded to plough for the plaintiff who is their biological father the remaining 2 acres as part of the lease arrangement essentially leaving them with nowhere to cultivate.

That it is at this point that they informed her that they were not aware of such arrangement and that there was a court order of status quo in force which allowed them to continue cultivating 1 acre each in the interim totalling to 5 acres. That she remained adamant that she had paid a lease fees for 10 acres and that she would cultivate nothing short of the 10 acres. That in a bid to avoid confrontation, they sought the assistance of the District Officer (DO), Mosoriot who summoned all of them including the plaintiff to his office.

That after the intervention of the said District Officer, the plaintiff acknowledged to have leased 10 acres to the said lessee, when asked by the District Officer where they would cultivate now that he had leased 10 acres and wanted the two acres for his use, he rudely retorted that it was not his problem.

That jointly with the District Officer, they managed to persuade the lessee to cultivate 7 acres and leave them with at lease 3 acres for the sake of their children and assist the plaintiff to cultivate his 2 acres to avoid future confrontation. That the said lessee reluctantly agreed but undertook to pursue the plaintiff/applicant for refunds of the 3 acre lease money she had paid hence the sour grapes and anger that resulted in the filing of this frivolous and vexatious application. That the plaintiff who is their biological father has never given them 6 acres of land for cultivation as alleged in paragraph 3 of his supporting affidavit and that they shall be pleased if the court so ordered him to actualize the claim as they await for the final determination of this suit. That save for the 3 acres of land surrendered to them by the lessee, they have neither cultivated the entire land parcel as alleged by the plaintiff nor interfered with any boundary and that the annexures marked (KK1) do not demonstrate or prove any of the said allegations.

The plaintiff submits that this court issued an order of status quo on the suit parcel of land in the presence of the defendants, however, they have defied the said order by ploughing the suit parcel and therefore, they are in contempt.

I have considered the supporting affidavit, replying affidavit and submissions on record and do find that the applicant has not proved as required by law that the defendants have disobeyed the court order as the court order was not specific but generally provided for status quo to be maintained. The defendants could be having beneficial interest in the property as alleged which can only be ascertained upon hearing of the suit. The factual question is, *whether the order was breached?* The standard of proof in contempt matters is slightly above “balance of probabilities” but lower than “beyond reasonable doubt”. The applicant in this matter has not demonstrated by facts to this court in reply to the replying affidavit that the defendant's are in contempt.

The application is therefore, dismissed with no order as to costs as the plaintiff is the father of the defendants.

DATED AND DELIVERED AT ELDORET THIS 22ND DAY OF FEBRUARY, 2016.

ANTONY OMBWAYO

JUDGE