



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 163 OF 2014

PHILIP EGO.....PLAINTIFF/APPLICANT

VERSUS

ANTHONY CHEBOIBOCH.....1ST DEFENDANT/RESPONDENT

WILLIAM KIPLAGAT.....2ND DEFENDANT/RESPONDENT

JOHANA KWAMBAI.....3RD DEFENDANT/RESPONDENT

RULING

The applicants have come to court for orders that the defendants be committed to jail for such a term or period not exceeding six months or such other term as the court may deem fit and appropriate in the circumstances for being disobedient and or in contempt of the court order issued on 6.7.2015.

The application is based on ground that:

- (i) This Honourable court issued an order of injunction on 6.7.2015 against the defendants/respondents.
- (ii) The order was duly served upon the defendants/respondents on 9.7.2015.
- (iii) The defendants/respondents have disobeyed the court order.
- (iv) Court orders are not made in vain but must be respected.
- (v) The defendants/respondents must be punished for the disobedience as provided by law.
- (vi) If the orders are not respected and disobedience not met with the force of the law, then orders of court will serve no purpose.

The application is supported by the affidavit of Philip Ego who states:

That this Honourable court issued an order of injunction against the defendants/respondents on 6.7.2015.

That the order was accordingly and promptly served upon the defendants/respondents on 9.7.2015.

That on 24.7.2015, the defendants/respondents took school children from Kapkei Primary and used them to harvest beans from the disputed parcel of land namely Kaptum/Land Adjudication Area/1621.

That again on 13.10.2015, the defendants/respondents used the same children and under their supervision, harvested maize from my parcel of land contrary to the court order.

That when he sent one of his representatives (nephew) one Benard Kipkosgei Kangogo on 13.10.2015 to ask the defendants/respondents why they were harvesting the crops contrary to the court order, Anthony Cheboiboch actually threatened to harm him.

That the defendants/respondents have acted in direct disobedience of the court order.

That he is informed by his Advocates on record, and believe the same to be true that orders of court are not made in vain but must be obeyed.

That is is further advised by his Advocates on record that if those who disobey court orders are not punished, then the Honourable court will be taken for granted ridiculed and the orders will serve no purpose.

That he now prays that the defendants/respondents be punished by this Honourable court by being committed to civil jail for a period not exceeding six months or such other period as the court may deem appropriate.

There is no replying affidavit.

In the affidavit of service dated 16.9.2014, Mr. Evans Ogeto Miyienda, an advocate of the High Court of Kenya on oath states that he served the 1st defendant with the plaint and supporting documents which he received for himself and on behalf of the 2nd and 3rd defendants and made acknowledgment on his copy.

On the 16.9.2014, the court made an order:

1. That the District Surveyor in charge of Keiyo Marakwet to visit the Kaptum/Land Adjudication Area/Land Parcel No. 1621 and establish or re-establish its boundaries and point the same out to the parties.
2. That the surveyor to also make a report on whether the defendants have encroached onto this parcel of land.
3. That the report to be filed within 30 days from today (16th September, 2014).
4. That the costs thereof to be shared.
5. That for the above reason, the application dated 16th June, 2014 is hereby deferred.
6. Mention on 23rd October, 2014 for the report.

The County Surveyor, Josphat Tanui visited the disputed plot on 11.11.2014 and recommended that since the said area is still under Adjudication, the matter should be referred to the Adjudication section to ensure the parcel number is plotted and ownership dispute resolved as per the Adjudication Act between the sellers Joseph Chesire and grandparents of Robert Murisha.

On 8.5.2015, Mr. Evans Ogeto Miyienda served hearing notices to the defendants for the hearing of the application on 21.5.2015 but the matter did not proceed.

On the 17.6.2015, Mr. Miyienda for the plaintiff took a date exparte for the hearing of application dated 16.6.2015. The matter was fixed for hearing on 6.7.2015.

On the 6.7.2015 after being satisfied that the defendants were served, I proceeded with the hearing and granted the orders No. 2 in the application dated 20.5.2014. The import of the court orders were:

1. That an injunction be and is hereby issued restraining the defendants/respondents, their servants or agents and or any other persons whatsoever in other way from entering, trespassing onto, damaging the boundaries, ploughing, cultivating, planting, annexing claiming ownership, leasing out interfering with or in any way whatsoever doing any other thing in or over all that parcel of land known as Kaptum/Land Adjudication Area/1621 pending the hearing and determination of this suit.

2. Costs be in the cause.

On 9.7.2015, the 1st defendant was served on his behalf and on behalf of the 2nd and 3rd defendants as can be discerned from the affidavit of Joseph O. Ochieng sworn on 10.7.2015.

The applicant alleges that the defendants are in contempt. He filed and served this application upon the 1st defendant on behalf of the 2nd and 3rd defendants. The defendants never filed a response and did not come to court.

This court finds that the application is not contradicted due to the fact that the respondents have not filed a replying affidavit.

This court finds that the applicant has satisfied the court that there was a court order given on 6.7.2015 and issued on 8.7.2015. However, the same was not served upon the 2nd and 3rd respondents personally and therefore, I decline to find them guilty for contempt of court. The evidence on record shows that the 1st defendant was personally served.

In the supporting affidavit, the plaintiff has demonstrated that the court order was disobeyed when the defendants harvested the plaintiff's maize despite a court order.

This court reinstates that court orders ought to be obeyed. No individual however, influential in society, however rich, however learned is above the law. Court orders have to be obeyed by all and sundry.

Having found the 1st defendant guilty of contempt of court, I do order that he be imprisoned for a period of one month. In the alternative, the 1st defendant should pay a fine of Kshs.150,000/=. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 3RD DAY OF JUNE, 2016.

ANTONY OMBWAYO

JUDGE