



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**ENVIRONMENT & LAND CASE NO. 254 OF 2013**

**SIMION KIPTOO.....1ST PLAINTIFF**

**JONAH KIPLAGAT KEMEI.....2ND PLAINTIFF**

**DAVID RONO RUTO.....3RD PLAINTIFF**

***(All suing as members of Kaptebee Ndalat Extension Scheme for and on behalf of 11 Others)***

**VERSUS**

**AUSTIN MURGOR.....1ST DEFENDANT**

**HENRY MURGOR.....2ND DEFENDANT**

**GEORGE MURGOR.....3RD DEFENDANT**

**SETTLEMENT FUND TRUSTEES.....4TH DEFENDANT**

**R U L I N G**

The applicant Simion Kiptoo Meto, Jonah Kiplagat Kemei and David Rono Ruto suing as members of Kaptebee Ndalat Extension Scheme for and on behalf of 11 others members have come to court against Austin Murgor, Henry Murgor, George Murgor and Settlement Fund Trustees for an order that the defendants be committed to Civil Jail for a period of not exceeding 2 years for contempt of court order or be fined accordingly.

The application is based on ground that:-

- (a) This court issued an order against the Defendants/Respondents on 27th March, 2014.***
- (b) The order which was endorsed with a notice of penal consequences was duly served upon the Defendants/Respondents on the 3rd April, 2014.***
- (c) The defendants/respondents have engaged in acts which they were directed NOT to do in the said order and particularly ploughed the suit parcel and planted maize on the same.***
- (d) The defendants/respondents conduct undermines the authority of this Honourable Court and ought to be punished for contempt of court.***
- (e) The application is made in good faith and in the interest of Justice.***

The application is supported by the affidavit of Simion Kiptoo Metto who states that he instructed his Advocate to file the suit herein seeking for a permanent injunction against the Respondent.

That on 20th March, 2014, the court granted him a temporary injunction against the Defendants/Respondents restraining them by themselves, their servants, agents and anyone acting under them barring the defendants from sub-dividing, selling leasing, charging or in any other way encumber or interfere with the land in dispute formerly identified as Plot No. 459 and 460 pending the final determination of this suit.

The order was issued on the 27th March, 2014 and the Defendants/Respondents were served on 3rd April, 2014 by the Process Server. That he simultaneously made an application through his advocate under certificate of urgency dated 14th November,2013 for temporary injunction pending the hearing and determination of the suit. The defendants/respondents have failed to comply with the order and are now engaging in acts they were directed not to do. In complete disregard of this Honourable Court the Defendants/Respondents and/or their servants or agents have interfered with or dealing with the suit parcel No.459 & 460 by ploughing and planting the said parcel contrary to the order of the court pending the hearing and determination of this suit. The defendants/respondents have continued to operate businesses on the suit land which conduct does not only belittle but also undermines the authority of the court. The Defendants/respondents have disregard and have continued to disregard the court order to date. The Defendants/Respondents should not be heard on this matter until they purge their contempt.

The Respondent filed a replying affidavit jointly signed by the three denying disobedience of the court order. They claim to have complied with the court order and that water is flowing to the cattle dip. They have never interfered with the cattle dip, dispensary and school. They have not subdivided, sold, leased, charged, encumbered or in any other way interfered with the original portion of land being plot Nos 459 and 460 pending the hearing of this suit herein and the final determination of the suit herein. They had continued to maintain the status quo over the said parcel of land pending the hearing and the determination of the suit herein. The portion they ploughed and planted maize is a portion they planted even before suit was filed and is in Plot No.1, Not 459 and 460. That none of the matters they were restrained from, has been committed by us. According to the respondents Simion Metto does not say which of the act they were restrained from has been disobeyed. They are law abiding citizens and will not wish to disobey court orders. That if indeed we planted on the said land, the applicant should have come to court much earlier before planting. They planted a different parcel, being Plot No.1 where they have always lived and farmed. They assert that the cattle dip and school are running.

Simion Kiptoo Metto swore a supplementary affidavit and annexed a valuation report indicating that the Murgor's finally has leased part of the land. George Murgor filed a supplementary affidavit stating that the Murgor's family is ploughing the land that they ploughed ever before the order was made and that the water was disconnected by the area chief.

The firm of Arap Mitei and Company Advocates submits that there is no dispute that the court issued an order on 27/3/2014 against the respondents which was evident with notice of penal consequences and which was duly served upon the Respondent on the 3.4.2014. According to the applicant, the respondents have disobeyed the court order and that they have proved that the respondents are in contempt of court as per the required standards. On the other hand, the respondent submits that there is no order restricting use of plot No.550 and yet that is part of what the plaintiffs sought to restrain and is what they purport to claim. They argue that the order provided for status quo to be maintained. Moreover, it is argued that the Plaintiffs were to connect the water to the Dip.

I have considered the rival submissions and do find that the order dated 27/3/2014 was to the effect that:-

**i) The operations of the Primary School, a Dispensary and a Cattle Dip do continue until a final determination on merits is made as to who owns or ought to own the parcels of land in issue.**

**ii) The Cattle Dip do operate and reconnection of water to the Cattle Dip be borne by the Plaintiffs.**

**iii) An order of injunction do issue barring the Defendants from Sub-dividing, selling, leasing, charging or in any other way encumber or interfere with the land in dispute which was formerly comprised in the land identified as Plot Nos.459 and 460 pending the final determination of this suit.**

**iv) The status quo prevailing on this disputed land ought to prevail until the final determination of this suit.**

**v) Costs of this application shall be costs in the cause.**

The said order was served upon the defendants and it is not disputed. The only dispute is whether the said order has been complied with. The Plaintiffs argue that the court order has been disobeyed by the Respondents who have ploughed and planted and have been operating business on the suit land and are even in the process of disposing of part of the land.

To begin with, this court finds that there was no order barring ploughing and planting and operating business on the suit land. The court order barred subdividing, selling, leasing, charging or in any manner encumbering or interfering with the land in dispute formerly known as 439 & 460. There is no evidence that this limb of order has been disobeyed. There is no evidence that the operation of the Primary School, Dispensary and cattle dip have been interfered with. The reconnection of water to the cattle dip was to be borne by the Plaintiffs. There is no evidence that the Plaintiffs have attempted to reconnect the water or that the defendants have barred the plaintiffs from reconnecting water. The burden of proof in such matters is borne by the applicant and the standard is slightly higher than balance of probabilities but not beyond reasonable doubt. I have considered the evidence on record as per the supporting affidavit and supplementary affidavit and do find that the same do not meet the requisite standard of proof required in such matters. Ultimately, this application is dismissed with costs.

**DATED AND DELIVERED AT ELDORET ON 19TH DAY OF AUGUST, 2016.**

**ANTONY OMBWAYO**

**JUDGE**