



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.159 OF 2014

DAVID OUMA OKORE.....PLAINTIFF/APPLICANT

VERSUS

PHELESIA ADOYO OTIENO.....1ST DEFENDANT/RESPONDENT

MOSES AYAGA ADHINGA.....2ND DEFENDANT/RESPONDENT

RULING

1. David Ouma Okore, the Applicant, through the notice of motion dated 6th July 2016 seeks to have **Moses Ayaga Adhinga**, the 2nd Defendant/Respondent cited for contempt of court for disobeying the court orders of 23rd June 2014 and that he be committed to jail for a period of not exceeding six months. The application is brought under **Sections 1A, 1B, 3 and 3A** of Civil Procedure Act and **Order 40 Rule 3(1)** and **Order 50 Rule 1** of Civil Procedure Rules. The application is based on five grounds marked (a) to (e) on the notice of motion and supported by the affidavit sworn by the Applicant on the 6th, July 2016 summarized as follows:

- a) That the Applicant applied for and obtained orders restraining both Defendants from entering, remaining in and interfering with his quiet possession and enjoyment of the suit land which were granted on 23rd June 2014.
- b) That the order was served on the 2nd/Defendant/Respondent on the 30th June 2014 and an affidavit of service sworn by Julius Otieno Raminya filed.
- c) That the 2nd Defendant/Respondent has disregarded the order by entering onto the suit land and planting sugarcane which was between eight to twelve months old as confirmed by the Assistant chief Sidho East 11 sub location vide his letter dated 29th June 2016.

2. The application is opposed by **Moses Ayaga Adhinga** through his replying affidavit sworn on 13th September 2016 summarized as follows:

- a) That he has not been served with any other orders except the one served with the plaint.
- b) That the Applicant has been having the orders extended ex parte without serving him or his advocate.
- c) That the application should be struck out as no contempt has been committed by him.

3. The application came up for hearing on the 14th September 2016 when Mr. Taremar and Ouma, learned counsel for the Applicant and 2nd Defendant/Respondent respectively, made their submissions.

4. The issues for determinations are as follows:

a) Whether the order issued on 23rd June 2014 restrained the 2nd Defendant/Respondent from, among others entering onto the suit land and planting crops thereon.

b) Whether the order was served on the 2nd Defendant/Respondent and if so when.

c) Whether the order is still in force and if not when it lapsed or was vacated.

d) Whether the 2nd Defendant/Respondent has disobeyed the order of 23rd June 2014, and if so, whether he should be cited for contempt of court.

e) What orders to issue.

f) Who should pay the costs of the application.

5. The court has carefully considered the grounds on the notice of motion, the affidavit evidence, submissions by counsel, the record of the court and come to the following findings:

a) That when the Applicant filed his plaint dated 10th June 2014, he contemporaneously filed the notice of motion of even date under certificate of urgency seeking to have the 2nd Defendant/Respondent restrained from **“entering into and remaining in, or in any other manner interfering with the Plaintiff’s quiet possession and enjoyment of land parcel, number Kisumu/East Sidho/1844”** pending the hearing and determination of the application, among other prayers. That the prayer was granted on the 23rd June 2014 and extracted in the order issued on 26th June 2014.

b) That the order was served on the 2nd Defendant/Respondent on the 30th June 2014 as confirmed in the affidavit of service sworn by Julius Otieno Raminya on the 2nd July 2014. That the 2nd Defendant/Respondent has also in his replying affidavit sworn on 13th September 2016 at paragraph 3 confirmed having received **“the 1st order which was served with the plaint.”** That first order is indeed the one of 23rd June 2014 issued on 26th June 2014 and served on him on 30th June 2014.

c) That the record shows that the interim orders of 23rd June 2014 were extended on 9th July 2014, 30th July 2014, 24th September 2014, 6th November 2014, 9th December 2014, 9th March 2015, 11th May 2015, 17th September 2015, and 24th September 2015. That in the orders of 24th September 2015, the interim orders were extended to the next date to be fixed at the registry. That next date for this matter to come to court was on the 27th July 2016 when the notice of motion dated 6th July 2016 was certified urgent for service in three days and directions that it be mentioned before Kisii ELC duty Judge on 2nd August 2016 given. That on 2nd August 2016 the matter was directed to be heard on 14th September 2016 when it was heard by this court.

d) That the record further shows that the counsel for the 2nd Defendant/Respondent was in court on the 24th September 2014, 6th November 2014, and 9th March 201, which were some of the dates the orders were extended.

e) That the findings in (c) and (d) above clearly shows that the interim orders from which the first order served on 2nd Defendant/Respondent on 30th June 2014 emanated from have been extended

Oyugi Court Assistant

Parties absent

Mr Omayya for Owino for 2nd Defendant.

Court: Ruling dated and delivered in open court in presence of Mr. Mr. Omayya for Owino for 2nd Defendant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

9/11/2016