



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

LAND CASE NO. 371 OF 2014

SHADRACK TABOT.....PLAINTIFF

VERSUS

EMILY JERONO TABOT AND 3 OTHERS.....DEFENDANT

RULING

On 23.12.2014, this court issued an order restraining the defendant jointly and severally from entering upon, trespassing into and further interfering with the Plaintiffs quiet possession and occupation of his land parcel number MUTWOT/NANDI/1017 pending hearing and determination of the application. The matter was scheduled for interparte hearing on 19/2/2015 but did not proceed and was adjourned to the 22/4/2015 the court extended the interim orders. On 22/4/2015 the parties agreed by consent to fast track the suit and maintain the status quo thus no party was to be evicted from the suit land. It is now being alleged that Hillary Kosgey has disobeyed this orders issued on 20.1.2015 and 22.4.2015 and therefore should be committed to jail for contempt.

The application is based on grounds that the court gave orders on the 26th January, 2014 which orders were issued on the same day injuncting the defendants/Respondents from interfering with the Plaintiff's quiet possession and occupation of this land parcel No. MUTWOT/NANDI/1017. That on 22.04.2015 in the presence of both parties the court ordered that status quo be maintained pending the hearing of the main suit. That status quo meant that each party to remain in their current portions and no eviction and trespass allowed during the period. That the defendants being led by HILLARY KOSGEI has now entered the Plaintiff's /Applicant's portion which is No. 1017. That he has started felling trees and destroying other vegetation. That he has also destroyed the Plaintiff's/Applicant's barbed wire and let loose his livestock to trespass into the portion. The Plaintiff/Applicant shall suffer loss if the defendants continued to engage in the same manner of the said suit land. That this application is necessary to preserve the integrity, dignity, power and authority of the court. That court orders are not issued in vain. That this application has been brought promptly and in good faith. That it will be just and fair for this Honourable court to grant the order sought.

The application is supported by the affidavit of *Shadrack Kibor Tabot* who states that the said orders were duly served upon the defendants. On the 22.4.2015 the court issued an order of status quo in the presence of both parties pending the hearing and determination of the suit but the defendants have contravened the orders of status quo and has entered the land No. 1017 and has destroyed the barbed wires and let loose his livestock to trespass into his portion and has released guinea fowls that are harming his chickens.

Hillary Kipkosgei Bor in replying affidavit deposed on 21/7 2016 states that he has not disobeyed the

court orders and further states that the Plaintiff has forcefully and illegally demolished their structures and fell down trees in their portion of 6 acres. The 2nd Defendant blames the Plaintiff for contempt. However, in paragraph 9 of the said affidavit admits to felling down trees he planted 30 years ago, for purposes of putting up a new home and posts for repairing fence with rotten poles to fence off grazing animals from straying into the respondent's farm and his.

Though the law on contempt is clear that order must be personally served courts have found that where the order is issued in presence of both parties, personal service is not necessary so long as it can be proved that the alleged contemnor is was aware of the order. In this case the order of status was issued in the presence of all parties and therefore there was no need for personal service. The court finds that the respondent was aware of the court order. On whether the 2nd defendant has disobeyed the order, this, court finds that the burden of proof in such matter lies with the person who alleges and the standard of proof is slightly above balance of probability but not beyond shadow of doubt. I do find that this burden has been discharged as the 2nd defendant admits cutting down trees despite the court ordering both parties to maintain status quo on the 8th of June 2015. Though both parties are alleging that it was the other party who disobeyed the court order by cutting trees the 2nd defendant has not brought any application for contempt against the plaintiff.

Black's Law Dictionary (Ninth Edition) defines contempt of court as: -

“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”

As early as 1778, Chief Justice McKean of the United States, when dealing with a case of a party in Civil litigation who refused to answer interrogatories is noted to have stated:-

“Since however, the question seems to resolve itself into this, whether you shall bend to the law, or the law shall bend to you, it is our duty to determine that the former shall be the case.”

(The History of contempt of Court (1927) P 47)

In Johnson Vs Grant (1923) SC 789 at 790 Clyde L J noted:-

“The phrase ‘contempt of court’ does not in the least describe the true nature of the class of offence with which we are here concerned.... The offence consists in interfering with the administration of the law; in impeding and perverting the course of justice..... it is not the dignity of court which is offended – a petty and misleading view of the issues involved, it is the fundamental supremacy of the law which is challenged.”

Closer home, in the case of **TEACHERS SERVICE COMMISSION v KENYA NATIONAL UNION OF TEACHERS & 2 others [2013]** eKLR Ndolo J observed that:-

“38. The reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law.”

This court is not oblivious of the law that court orders ought to be obeyed. However, the court ought to be careful not to punish an innocent party. On the 8/6/2015 the court issued an order that the Deputy registrar visits the disputed parcel of land and prepares a status report on the subject parcel of land, however this has not been done. Though the status report has not been prepared the 2nd defendant has admitted changing the status of the suitland by cutting trees and therefore has defied the order of this court.

The upshot of the above is that the application is allowed thus the 2nd defendant is hereby found to be in contempt of court is hereby imprisoned for a period of 30 days with an option to pay a fine of ksh 10,000. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 9TH DAY OF DECEMBER, 2016.

ANTONY OMBWAYO

JUDGE