

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L 550 Of 2013

PAUL KIPCHUMBA SEREM.....PLAINTIFF

VS

WILLIAM CHEPKWONY.....DEFENDANT

(Application to have defendant punished for disobeying an order of injunction; facts showing clear disobedience; application unopposed; application allowed; warrant of arrest to issue)

RULING

This is an application dated 23 January 2014 brought pursuant to the provisions of Order 40 Rule 3 of the Civil Procedure Rules and Section 29 of the Environment and Court Act, 2011. The plaintiff wants the defendant compelled to attend court and show cause why he should not be committed to civil jail and/or his property attached for the reason that he has disobeyed the orders of injunction issued on 7 January 2014.

The plaintiff filed this suit on 18 December 2013. His case is that he bought 10 acres of land in 1997 out of the land parcel LR No. 8304 from one Philip Kogo. He averred that he lived peacefully on the land till 2013 when the defendant started disturbing his quiet occupation. It was also stated that the defendant had gone ahead and ploughed the land. Simultaneously with the plaint, the plaintiff filed an application for injunction. Interim orders against the defendant were granted on 19 December 2013 and the matter was fixed for inter-partes hearing on 6 January 2014. The defendant was duly served but did not respond to the application. Neither has he entered appearance to date. The application for injunction was heard on 6 January 2014 and ruling delivered on 7 January 2014. The ruling allowed the application for injunction and barred the defendant from interfering with the suit land until the final determination of the suit.

In this application, the plaintiff has deponed that despite being served with the order on 9 January 2014, the defendant has disobeyed it. It is averred that on 11 January 2014, while the plaintiff was ploughing the land, the defendant came with a knife and rungu and told the driver who is the plaintiff's son, to stop ploughing. It is stated that on 18 January 2014, the defendant ploughed the land. It is further stated that the defendant informed the plaintiff that he is just wasting time in court.

I have seen the affidavit of service of the process server and it shows that the defendant was duly served with the order of injunction. It is clear that the defendant has disobeyed it. I now order the OCS Moiben Police Station to proceed and arrest the defendant and present him before this court after which I will proceed to mete out the appropriate punishment in his presence.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 27TH DAY OF FEBRUARY 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET.

Delivered in the presence of:

Mr. Kiboi for the applicant

