



**REPUBLIC OF KENYA**

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

**E&L 299 OF 2013**

**KIPTURGO AMDANY.....PLAINTIFF**

**VS**

**JOHANA SIRMA CHEBURET.....DEFENDANT**

**RULING**

The application before me is the Motion dated 16 July 2013 filed by the plaintiff. It is an application brought under the provisions of Section 29 of the Environment and Land Court Act, Act No. 19 of 2011 together with all other enabling provisions of the law.

The core prayers in the application are two. First, the applicant has sought to have the defendant committed to jail for a term of 2 years for disobeying the orders issued on 28 May 2013 . Secondly, the applicant has asked that the defendant be denied audience until he purges his contempt.

In this suit which was instituted by way of plaint, the plaintiff pleaded that he is the registered owner of the land known as Kapkoiwo Plot No. 2071. He pleaded that he has been resident on this land since the 1980s but that on 15 March 2013, the defendant forcibly entered the plot and started ploughing it. The main prayer in the plaint is for orders to have the defendant permanently restrained from interfering with the suit land.

Together with the plaint, the plaintiff filed an application dated 22 May 2013 seeking orders of interlocutory injunction to have the defendant restrained from further interference with the suit land pending the hearing and determination of the main suit.. I first heard the application ex-parte on 27 May 2013 and granted interim orders of injunction pending the inter-partes hearing of the application. The formal order was issued on 28 May 2013. The defendant was duly served with the application but filed no response to the same and did not appear during the inter-partes hearing. I heard the application and allowed the same through the ruling delivered on 9 July 2013.

In the present application, the plaintiff has averred that the defendant was served with the order issued on 28 May 2013 but has disobeyed the same. In his application, he has deponed that the defendant was served on 30 May 2013 with the order. However, on 16 June 2013, the defendant entered the land in question and did weeding of maize and beans between 11.00am and 1.00pm. On 22 June 2012, the defendant again entered the land and started to prepare the ground ready for construction of a building with five people. On 22 June 2013, the plaintiff has deponed that he went to the land with another person called Samuel Chumel at around 12 noon and saw the defendant with his workers preparing the ground by digging and removing stones in readiness to construct a house. The plaintiff asked him why he was doing that despite the court order and the defendant replied that he does not care about court papers, "what is court papers". The plaintiff then reported the matter to the Chief of the area who promised to visit the land the following day (23 June 2013) and he found the defendant on the land. The plaintiff has stated that

unless the defendant is summoned and punished accordingly, the reputation of this court will be put into disrepute and its dignity lowered.

There is also the affidavit of Isaac Kimosop Tobole, the Chief of Kipkata Location, where the land is situated. He has deponed inter alia that on 22 June 2013, the plaintiff came to see him and informed him that the defendant was preparing to construct a house on the suit land. The following day, he went to the land at about 3 p.m accompanied by two administration police officers. He found the land had been prepared and a foundation ready for construction with the defendant present on the land doing final clearance of the foundation.

Samuel Chumel has also sworn an affidavit. He has deponed that on 22 June 2013 accompanied by the plaintiff he found the defendant with five people on the land preparing to construct a house by digging the land and removing stones. Words were exchanged.

Also annexed to the application is the affidavit of service sworn by Kipserem Jackson Cheburet who has deponed that he served the order issued on 28 May 2013 upon the defendant on the 30 May 2013.

The defendant has filed no response to this application. The facts in the supporting affidavits speak for themselves. It is clear that despite being served with the order issued on 28 May 2013, the defendant has opted to disobey the same. I find that he is in contempt of court.

It cannot be overemphasized that orders of the court must be respected by all. That is the only way that the rule of law can prevail. If people chose what orders to obey and what orders to disobey, anarchy will be the order of the day. The culture of disobedience of court orders must stop and the court is obligated to put its foot down to ensure that orders issued are obeyed.

Section 28 of the Environment and Land Court Act, Act No. 19 of 2011 provides as follows :-

Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.

I have already found that the defendant has disobeyed the orders of this court. He failed to appear when summoned to answer to this application. I now issue a warrant of arrest of the defendant who shall be brought forthwith to this court for the appropriate punishment to be meted out in his presence.

I direct that this order be served upon the OCPD Baringo who shall forthwith arrest the defendant and shall cause him to be presented to this court.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 2ND DAY OF AUGUST 2013

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET**

***Read in open Court***

***In the Presence of:-***

***N/A for M/s Tarus & Co for the applicant***

***Defendant absent***