



**Sangare v Sadera & 4 others; Seventh Day Adventist Church
(Interested Party) (Environment & Land Case E001 & E011 of 2023
(Consolidated)) [2024] KEELC 3325 (KLR) (23 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3325 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE E001 & E011 OF 2023 (CONSOLIDATED)
CG MBOGO, J
APRIL 23, 2024**

BETWEEN

KAIYIONI OLE SANGARE PLAINTIFF

AND

LEPOSO SADERA 1ST DEFENDANT

SARUNI OLE NOOSE 2ND DEFENDANT

DISTRICT LAND REGISTRAR NAROK 3RD DEFENDANT

DISTRICT SURVEYOR NAROK 4TH DEFENDANT

THE ATTORNEY GENERAL 5TH DEFENDANT

AND

SEVENTH DAY ADVENTIST CHURCH INTERESTED PARTY

RULING

1. Before this court for determination is the Notice of Motion Application dated 19th February, 2024 filed by the plaintiff/applicant herein, expressed to be brought under Order 40 Rule 3 (1), Order 51 Rule 1 & 13 of the Civil Procedure Rules and Sections 1, 1A, 3A and 63 (E) of the Civil Procedure Act, Section 13 of the Environment & Land Court Act, and Section 6 (C) of the Contempt of Court Act 2016 (*sic*) seeking the following orders: -

1. Spent.
2. That this honourable court be pleased to issue warrants of arrest against Leposo Sadera-the 1st respondent and the District Land Registrar-Narok the 3rd respondent whether acting by themselves or their employees, servants herein for arraignment to show cause why the said



persons should not be jointly and severally committed to serve 6 months imprisonment for disobeying the orders of this honourable court.

3. That the honourable court be pleased to punish Leposo Sadera-the 1st respondent and the District Land Registrar-Narok the 3rd respondent whether acting by themselves, their employees, servants respectively by committing the said persons to prison for a period not exceeding 6 months for disobeying court orders herein made on the 26th October, 2023.
4. That cost of this application be borne by the respondents.
5. Any other order that the court may grant to safeguard the interest of the applicant.
2. The application is premised on the grounds inter alia that this court issued orders on 26th October 2023, which was duly served upon the 1st and 3rd defendants with penal notice on 30th October 2023.
3. The application is supported by the affidavit of the plaintiff/ applicant sworn on even date. The plaintiff/applicant deposed that the 1st and 3rd defendants/respondents were served with the orders of this court issued on 26th October, 2024 (*sic*) which they acknowledged receipt. He deposed that in a turn of events, a group of people being members of the interested party went to the suit property being parcel no. Cis-Mara/Oleleshwa/201 and wanted to take possession in disregard of the orders of this court. Further, that he was shocked that the interested party had parcels of land transferred into their name on 6th December 2023 and another parcel backdated to 6th July, 2023. Further, that the 1st and 3rd defendants/ respondents have never disputed the said orders be it orally in court, or through an application.
4. The plaintiff/applicant deposed that the 1st and 3rd defendants/respondents with actual and constructive knowledge of the orders proceeded to transfer the resultant parcels number Cis-Mara/Oleleshwa/25235-25239 to the interested party herein on 6th December, 2023 in violation of a court order despite having been duly served. He further deposed that the orders and processes of this court are being abused, violated and circumvented and it is necessary to maintain the rule of the law and the dignity of this court.
5. On 20th February, 2024, this court issued directions as to the disposal of the application including timelines as to filing the responses to the application. This was done in the presence of Mr. Okumu, Counsel for the 1st defendant/respondent. The 1st defendant/respondent did not file his response to the application.
6. On the same date, this court gave directions as to the disposal of the application which was by way of written submissions. None of the parties has filed their written submissions.
7. Be that as it may, it may be well to state that the application is unopposed. However, even as the court is aware that the application has not been challenged, the court has to be satisfied as to the merits of the application to grant the orders sought.
8. In the instant application, the plaintiff/applicant is seeking orders to have the 1st and 3rd defendants/respondents arrested and arraigned in court to show cause why they should not be imprisoned for disobeying court orders. Secondly, the application seeks that the 1st and 3rd defendants/respondents be committed to civil jail for disobeying the orders issued by this court on 26th October, 2023.



9. The law is very clear on the obedience of the court orders and gives consequences of such disobedience. Order 40 Rule 3(1) of the Civil Procedure Rules provides that: -

“In case of disobedience or breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in prison for six months unless in the meantime the Court directs his release”.

10. Further Section 63 (c) of the Civil Procedure Act provides that: -

“In order to prevent the ends of justice from being defeated, the Court may if it is prescribed; grant a temporary injunction and in case of disobedience convict the person guilty thereof to prison and Order that his property be attached and sold”.

11. The provisions of the Environment and Land Act also buttress the above position. Section 29 of the said Act reads 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 one million shillings or to imprisonment for a term not exceeding two years or both”.

12. On 26th October, 2023, this court granted orders against the 1st and 3rd defendants/respondents by themselves, their agents, servants by whatever name called from selling and transferring parcel number Cis Mara/Oleleshwa/201 of approximate area 14.41 Ha and or the resultant parcels being Cis Mara/Oleleshwa/25235-25239 pending the hearing and determination of the application. The said orders were issued by the court on 27th October, 2023, and served upon the respondents on 30th October, 2023 as can be seen from a copy annexed to the application. It appears that the 1st and 3rd defendants/respondents went ahead and in total disobedience, sought to deal with the suit property in the manner that they so did by effecting transfer on the suit properties in the name of the interested party, as can be seen from copies of the official searches conducted on 5th February, 2024. Also, the parcel known as Cis-Mara/Oleleshwa/25236 appears to have been registered in the name of the interested party on 6th July, 2023.

13. From the documents relied upon by the plaintiff/ applicant, this court finds that indeed, the 1st and 3rd defendants/respondent are in contempt of the court orders granted on 26th October, 2023 and issued on 27th October, 2023 and therefore liable to be punished for contempt of court. This court cannot allow them to get away with deliberate disobedience of the orders of the court.

14. I therefore direct that Leposo Sadera and the District Land Registrar, Narok be arrested and arraigned in court on 25th April, 2024 and show cause why they should not be committed to prison or otherwise penalized for contempt of court. I make no orders as to costs.

It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL THIS 23RD DAY OF APRIL, 2024.

HON. MBOGO C.G.

JUDGE

23/04/2024.

