



REPUBLIC OF KENYA



Chumba v Murei (Land Case E010 of 2023) [2024] KEELC 4891 (KLR) (24 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4891 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
LAND CASE E010 OF 2023
MN MWANYALE, J
JUNE 24, 2024

BETWEEN

PHILIP KIPKOSGEI CHUMBA PLAINTIFF

AND

KIMETTO ARAP MUREI DEFENDANT

RULING

1. Vide the application dated 27/3/2024 the Defendant/Applicant sought orders as follows; -
 - i. Spent
 - ii. Spent
 - iii. Pending the hearing and final determination of this suit, the Court do issue, a permanent injunction restraining the Plaintiff/Respondent by themselves, their agents or servants, from ploughing, encroaching, trespassing, constructing and/or in any other manner from interfering with suit land being land parcel known as Nandi/Ndalat/269.
 - iv. The Plaintiff/Respondent be committed to civil jail for a period not exceeding six months for disobeying the Court orders issued on 21st September 2023.
2. On 6/5/2023 when the matter come up for hearing, it did not proceed as the Plaintiff/Respondent had not filed a Replying Affidavit as he was said to be indisposed and the matter was slated for hearing on 21/5/2024 on prayer 4 only.



3. The hearing in relation to prayer 4 of the application was informed by the fact that the Plaintiff had filed an injunction application hitherto and in relation to that application the Court had issued status quo orders in terms as follows; -

“The status quo orders are extended in terms that the Plaintiff to remain in possession of the suit property until after harvesting the current crops in December thereafter no new crops to be planted by either party.”

4. The Court noting the existence of the said orders thus declined to hear prayers 2 and 3 which had sought injunction orders but ordered hearing of prayer 4. In relation to committal of the Plaintiff/Respondent to civil jail for breach of the status quo orders issued on 21/9/2023.

5. A replying affidavit was filed in opposition to the application where the Defendant/Respondent deponed that he was under impression that being in possession of the suit land, the status quo orders meant he could cultivate and that he had not been served with the Court orders but relied on the verbal information conveyed to him by his Advocate on record.

6. The application was argued orally with Ms. Chelimo Bungei appearing for the Applicant and Mr. Songok Kaptich appearing for the Respondent.

7. It was Ms. Chelimo's submission placing reliance on the decision in North Tetu Farmers vs Joseph Nderitu Wanjohi that the 4 elements to be proved for contempt of Court being the existence of a clear and unambiguous order, Defendant had knowledge of the same, Defendant acted in breach of the orders and the Defendant's actions were deliberate have been proven.

8. Ms. Chelimo further submitted that the orders issued on 21/9/2023 were clear and unambiguous, that the Plaintiff/Respondent's Counsel was aware of the said orders, hence the Plaintiff/Respondent had knowledge of the orders, that by ploughing and planting new crops, the Plaintiff/Respondent breached the orders.

9. And that the Plaintiff/Respondent actions were deliberate, as he had been warned on 21/3/2024 vide a letter on the same dated addressed to the Plaintiff/Respondent's Counsel which letter annexed KAM 3, at which time the Plaintiff/Respondent was ploughing the land and since he planted thereafter necessitating this application, the Plaintiff/Respondent acted in deliberate breach of the Court orders.

10. Mr. Songok for the Plaintiff/Respondent conceded the existence of the Court and submitted having explained the orders to the Plaintiff/Respondent via the Plaintiff/Respondent son.

11. The Plaintiff/Respondent submitted and requested for forgiveness and essentially conceded to the contempt application.

Issues For Determination: -

12. The Court frames the following as the issue for determination. Whether the application for committal of the Plaintiff/Respondent is merited.

Analysis and Determination: -

13. In his Replying Affidavit, the Plaintiff/Respondent depones that he was under the impression that the status quo orders allowed him to cultivate as he was in possession of the property.



14. That from the depositions at paragraph 4, 5 and 7 of the Replying Affidavit reveal knowledge of the orders as the same were communicated to the Plaintiff/Respondent and the orders indeed bound both parties.
15. The Plaintiff/Respondent having planted new crops was indeed in breach of the said orders.
16. The status quo orders issued on 21/9/2023 were issued so as to compromise an application that the Plaintiff/Respondent had filed seeking injunction orders against the Defendants.
17. The status quo orders were clear and unambiguous which allowed the Plaintiff/Respondent to harvest his crops in the month of December 2023 and for nor new crops to be planted till hearing and determination of the suit.
18. Was the Plaintiff /Respondent aware of the orders issued? Which he bound him and he had knowledge of.
19. The Court finds that via annexure KAM 3 the Plaintiff/Respondent through his Advocates was reminded of the existence of the orders and warned not to plant to new crops. His action of planting the new crops were therefore a deliberate breach of the orders, and the court finds the Plaintiff/Respondent in contempt of its orders and shall give the Plaintiff/Respondent an opportunity to mitigate and thereafter met out the appropriate sentence.

RULING, DELIVERED AND DATED AT KAPSABET THIS 24TH DAY OF JUNE 2024.

HON. M. N. MWANYALE,

JUDGE

In the presence of:-

1. Mr. Songok for the Plaintiff/Respondent
2. Ms. Chelimo for the Defendant/Applicant

