



**Precepts Holding Limited v Johana (Environment & Land Case 8 of 2021) [2023] KEELC 16871 (KLR) (19 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16871 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT & LAND CASE 8 OF 2021**

**EM WASHE, J**

**APRIL 19, 2023**

**BETWEEN**

**PRECEPTS HOLDING LIMITED ..... PLAINTIFF**

**AND**

**NGENO KIPYEGON JOHANA ..... DEFENDANT**

**RULING**

1. The plaintiff herein (referred to as “the applicant”) has moved this court by way of a notice of motion dated December 20, 2023 (hereinafter referred to as “the present application”) seeking for the following orders; -
  - i. That this Application be certified urgent and heard ex-parte on the first instance.
  - ii. That this Honourable Court be pleased to issue summons against the defendant/respondent/Contemnor (Ngeno Kipyegon Johana) to show cause why he has wilfully disobeyed court orders dated January 24, 2022 and December 6, 2022 pending the hearing and determination of this Application.
  - iii. That the Court be pleased to order the Officer Commanding Station Lolgorian Police Station to file a report from the outcome of his investigations as per OB Number OB17/17/12/2022 to aid in the hearing and determination of the present application.
  - iv. That the Defendant/Respondent/Contemnor (Ngeno Kipyegon Jahana) be committed to Civil Jail for a period not exceeding six months for deliberately disobeying, flouting and or circumventing the Court Orders dated January 24, 2022 and the December 6, 2022 and for ridiculing and undermining the institution of the court.
  - v. That this Court be pleased to make any other orders as it deems fir in the circumstances.
  - vi. That costs of this application be provided for.



2. The present Application is supported by various grounds that can be summarised as follows; -
  - a. The Court herein issued an eviction order against the defendant/respondent/contemnor pursuant to the judgement dated January 24, 2022 and the orders of December 6, 2022.
  - b. The defendant/respondent/contemnor was aware of the judgement pronounced on January 24, 2022 and the eviction orders of December 6, 2022.
  - c. In compliance of the eviction orders issued on December 6, 2022, the plaintiff/applicant with the aid of the OCS Lolgorian Police Station proceeded to evict the defendant/respondent/contemnor on the 16<sup>th</sup> of December 2022.
  - d. However, in flagrant disobedience of the eviction order issued on December 6, 2022 and the actually eviction of the 16<sup>th</sup> of December 2022, the Defendant/respondent/contemnor returned back to the suit property and took occupation of the same after the police had left.
  - e. Further to that, the defendant/respondent/contemnor has continued to occupy the suit property without any lawful justification and in disobedience of the eviction order issued on the 6<sup>th</sup> of December 2022.
  - f. The plaintiff/applicant herein being the lawful owner of the suit property filed a complaint of trespass against the defendant/respondent/contemnor on the 17/12/2022 and was issued with OB Number OB 17/17/12/2022 but no action has been taken by the officers from Lolgorian Police Station.
  - g. Consequently therefore, the conduct of the defendant/respondent/contemnor greatly undermines the institution and authority of the Court and if not checked will result to defiance and not obedience of lawful court orders.
  - h. Further to that, if the present application is not granted, then the plaintiff/applicant will be denied the fruits of his judgement and suffer irreparable loss and injury.
3. The grounds outlined hereinabove are further expounded by the Affidavit of the plaintiff sworn on the 20<sup>th</sup> of December 2022.
4. Upon service of the present Application on the defendant/respondent, the same was opposed by a replying affidavit dated January 18, 2023.
5. The Defendant/respondent In The Replying Affidavit dated January 18, 2023 relied on the following reasons; -
  - a. The plaintiff/applicant's allegation that he disobeyed the eviction orders issued on the 6<sup>th</sup> of December 2022 was inaccurate and/or misleading.
  - b. The defendant/respondent indicated that on the 16<sup>th</sup> of December 2022 when the orders of 6<sup>th</sup> December 2022 were being enforced, he was in fact in the United States of America and not anywhere near the suit property.
  - c. Further to that, his occupation on the suit property up to now is based on the stay of execution orders issued on the December 20, 2022 through the proposed interested party's application dated December 20, 2022.
  - d. The defendant/respondent therefore pleaded that his occupation of the suit property was legitimate and lawful.



- e. Further to that, the defendant/respondent admitted that he had failed to liquidate the decretal sum of KShs 23,000,000/- as ordered by the court on the January 24, 2022 due to financial difficulties.
  - f. However, the defendant/respondent has been in constant communication with the plaintiff/applicant with a view of liquidating the outstanding amount and resolve this suit in its entirety.
  - g. In conclusion thereof, the defendant/respondent sought for the court to dismiss the present application with costs.
6. The parties herein did not file any submissions but sought the court to make its determination based on the pleadings herein.
  7. The pleadings in the present application seek to deal with the issue of compliance with court orders.
  8. The plaintiff/applicant claims that on the 16<sup>th</sup> of December 2022 in execution of the eviction orders issued on the 6<sup>th</sup> of December 2022 did proceed to the suit property, evicted the defendant/respondent of his occupation and thereafter took possession.
  9. The plaintiff/applicant states that all actions were done in the presence of the OCS Lolgorian Police Station as the person providing the necessary security.
  10. However, soon thereafter, the defendant/respondent trespassed on to the suit property while in possession and occupation of the plaintiff/applicant and has refused to vacate in contravention of the eviction orders issued on the December 6, 2022.
  11. The defendant/respondent disputes these allegations by the plaintiff/applicant herein.
  12. The defendant/respondent states that he was in the United States of America on the December 16, 2022 and therefore could not have interfered with the execution of the eviction orders issued on the 6<sup>th</sup> of December 2022.
  13. The defendant/respondent further denies that the plaintiff/applicant successfully evicted him from the suit property on the 16<sup>th</sup> of December 2022 and therefore his continued occupation has been based on the stay of execution orders issued on the 20<sup>th</sup> of December 2022 through the proposed interested party's application.
  14. The present application has been filed by the plaintiff/applicant and therefore it is important that he places sufficient evidence of the disobedience of the court's orders to enable it act with speed.
  15. The affidavit in support of the present application only places before the court the decree issued on the 24<sup>th</sup> of January 2022, the eviction order issued on the December 6, 2022 and the OB Number from Lologorian Police Station.
  16. However, the plaintiff/applicant has not provided any report from a licensed court bailiff on when eviction took place, or an inventory of the items belonging to the defendant/respondents were removed and/or lastly how and/or in what manner the plaintiff/applicant secured the suit property proclaiming his return thereof.
  17. Similarly, there is no report from the OCS Lolgorian Police Station confirming that indeed they escorted the court bailiff and successfully evicted the defendant/respondent and gained possession of the suit property in favour on the plaintiff/applicant herein.



18. In the absence of this reports from the licensed bailiff and the OCS Lolgorian Police Station, the Court does not find any evidence to confirm that the plaintiff/applicant actually executed the eviction orders as alleged and disposed the defendant/respondent of the suit property.

19. Consequently therefore, the plaintiff/applicant's application dated December 20, 2022 is hereby dismissed with each party bearing its own costs.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON DAY OF 19<sup>TH</sup> APRIL, 2023.**

**EMMANUEL.M.WASHE**

**JUDGE**

**IN THE PRESENCE OF:**

**COURT ASSISTANT: NGENO/MEMPE**

**ADVOCATE FOR THE APPLICANT: MR. MUGUMYA**

**ADVOCATE FOR THE RESPONDENT: MR. NGARUIYA**

