



**Cherutich v Chesaro (Environment & Land Case 112 of 2014)  
[2023] KEELC 17641 (KLR) (25 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17641 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 112 OF 2014**

**EO OBAGA, J  
MAY 25, 2023**

**BETWEEN**

**AYABEI CHERUTICH ..... PLAINTIFF**

**AND**

**TAPNYABEI CHESARO ..... DEFENDANT**

**RULING**

1. This is a ruling in respect of a notice of motion dated April 14, 2023 in which the decree holder/ applicant seeks the following orders: -
  1. This application be certified as urgent and that the same be heard on priority basis.
  2. The judgement debtor/citee be ordered to attend court in person at the hearing of this application.
  3. The honourable court do find the judgement debtor/citee in contempt of the decree and order of the court issued on December 19, 2019.
  4. The judgement/citee be convicted for contempt of court order and decree issued on December 19, 2019.
  5. The judgement debtor/citee be: -
    - i. Sentenced to 6 months' imprisonment.
    - ii. Ordered to pay a fine in the sum of Kshs 200,000/=
  6. The judgement debtor/citee be ordered to purge the contempt by vacating the suit land and removing the fence illegally erected on a portion land parcel Baringo/Kapropita/309 in contravention of the decree issued on 13/06/2019.



7. In default of order (6) above, court bailiffs be ordered to evict the citee at her costs.
8. Costs.
2. The applicant contends that the court delivered a judgement on September 24, 2018 in which it was found that the judgement debtor/respondent had encroached on to the applicant's parcel by 0.2 hectares. The respondent was served with the decree but did not comply.
3. The applicant was forced to come to court where he applied for eviction orders. The court granted the eviction orders and the respondent was eventually evicted. The applicant contends that he and the respondent lived peacefully until June 16, 2020 when the respondent took a surveyor to the ground in the company of police officers to re-survey the land.
4. On March 11, 2023, the respondent encroached on to the applicants' land by ploughing the same in preparation of this year's planting season. The applicant then asked the county surveyor from Baringo who went to the ground and confirmed that the respondent had indeed encroached on to the applicants' land. It is on this basis that the applicant is seeking for the orders sought in paragraph 1 above.
5. Though the respondent was served, she neither filed grounds of opposition nor replying affidavit. I have carefully gone through the applicant's application together with the supporting documents. The only issue for determination is whether the respondent is in contempt of the order or decree issued on December 19, 2019.
6. The decree and or order which is alleged to have been disobeyed is an extracted order arising from an application for eviction dated October 23, 2019. The extracted order stated as follows: -
  1. That the defendant/judgement debtor herein be evicted from that portion of land measuring 0.2 Ha comprised in land parcel Baringo/Kapropita/309 in execution of court order given on September 24, 2018.
  2. That the officer in charge of station, Kabarnet Police Station do provide security to the court bailiffs on the execution of the said order.
  3. That execution be done during the day and in a humane manner.
7. As can be seen from the extracted order which was given on December 18, 2019 and issued on December 19, 2019, the respondent was not asked to refrain from doing anything or from doing anything. This was a court order directing the eviction of the respondent under the supervision of the OCS Kabarnet Police Station.
8. The eviction was fully carried out in the manner directed by the court. The respondent cannot therefore be blamed for being in contempt of what was executed in the exact terms of the court order.
9. A court look at the reliefs or orders being sought and grants or declines them in accordance with the pleadings by the applicant. In the instant case, the court cannot go beyond what the applicant prayed for. The application as sought cannot be a basis for any form of contempt as prayed herein. I therefore find that the applicant's application has no merits. The same is dismissed with no order as to costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 25<sup>TH</sup> DAY OF MAY, 2023.**

**E. O. OBAGA**

**JUDGE**



**In the virtual presence of;**

Mr. Kipnyekwei for Decree holder/Applicant.

Court Assistant –Laban

**E. O. OBAGA**

**JUDGE**

**25<sup>th</sup> MAY, 2023**

