



Choge v Kipchirchir & 4 others (Environment & Land Case 38 'A' of 2021) [2023] KEELC 19203 (KLR) (27 July 2023) (Ruling)

Neutral citation: [2023] KEELC 19203 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 38 'A' OF 2021**

EO OBAGA, J

JULY 27, 2023

BETWEEN

ABRAHAM KIPROP CHOGE APPLICANT

AND

JAMES KIPCHIRCHIR 1ST DEFENDANT

CHEPTORUT BIWOTT 2ND DEFENDANT

JOSEPH KIBIWOTT 3RD DEFENDANT

ABRAHAM KIPKORIR LIMO 4TH DEFENDANT

DAVID CHELULE 5TH DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated March 20, 2023 in which the Applicant seeks the following orders:-
 1. That the Application be certified as urgent.
 2. That in the interim the court be pleased to stay execution arising ruling delivered on finding the Applicant guilty of contempt and or admit the Defendant/Applicant on bond pending hearing and determination of the application.
 3. That the court do find that the Applicant Samson Kipchirchir Biwott was wrongly arrested and detained in prison at the instigation of the Plaintiff.
 4. That the orders made on finding the Defendant/Applicant guilty of contempt be set aside and the orders issued on 6/12/2021 and the application dated 10/3/2022 and 28/5/2021 be heard afresh and the Applicant be granted leave to file response to the said application.



2. The Plaintiff filed a suit against the Defendants. He contemporaneously filed a notice of motion dated 28/5/2021 in which he sought an injunction restraining the Defendants from interfering with LR No Plateau/Kipkabus Block 4 (Lelmokwo)/23 (suit property). This application was served upon the Defendants and it came up for hearing on 29/11/2021 when it was allowed.
3. An order was extracted and it was served upon the Defendants and their lawyer. The Defendant defied the order and proceeded to plough the suit property. This forced the Plaintiff to come to court for contempt on the part of the Defendants. The Defendants were found guilty of contempt. The 5th Defendant was arrested together with the Applicant herein.
4. On 21/3/2023, the Applicant was released on a personal bond of Kshs 100,000/= pending the hearing of this application. The Applicant is seeking to be allowed in these proceedings and that he be allowed to respond to the application dated 10/3/2022 and that of 28/5/2021. The Applicant contends that he was wrongly arrested and brought before the court.
5. The Applicant's application was opposed by the Plaintiff/Respondent through a replying affidavit sworn on 18/4/2023. The Respondent contends that the Applicant is a son to the 2nd Defendant and that he is the one who has been receiving court documents on behalf of his father and that he is the one who has been cultivating the land on behalf of his father.
6. The Respondent further contends that the Applicant has not laid a basis for his joinder as the 6th Defendant and cannot seek to have the application dated 10/3/2022 and 28/5/2021 heard afresh. Parties were directed to file written submissions but none filed submissions.
7. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondent. There are two issues which are for determination. The first is whether the Applicant was lawfully arrested and the second is whether the Applicant should be joined in the proceedings.
8. On the first issue, the Applicant has not denied the fact that he is son to the 2nd Defendant. He has also not denied the fact that he is the one who has been receiving court documents on behalf of his father. The injunction which was issued restrained the Defendants and or their agents from interfering with the suit property. Though the Applicant is not named as a Defendant it has been proved that he is he one cultivating on the land. This being the case, he is guilty of contempt and he was therefore properly arrested.
9. On the second issue, there is no basis upon which the Applicant can be joined as a Defendant in this matter. He did not purchase land from the Respondent. Other than being a son to the 2nd Defendant, he has not demonstrated what interest he has in this matter to warrant his joinder. I therefore find that the Applicant's application is without any merit. The Applicant's application is dismissed with costs to the Respondent. The Applicant's bond is hereby cancelled. He should voluntarily come to court for punishment or be brought to court under warrant of arrest.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 27TH DAY OF JULY, 2023.

E. O. OBAGA

JUDGE

