



Chepkwony & another v Chepkwony (Environment & Land Case E004 of 2023) [2025] KEELC 1188 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1188 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE E004 OF 2023
LA OMOLLO, J
MARCH 13, 2025**

BETWEEN

STELLA CHEBET CHEPKWONY 1ST PLAINTIFF

IRENE CHEPKWONY 2ND PLAINTIFF

AND

JOSEPHINE CHEPKWONY DEFENDANT

RULING

Introduction

1. This ruling is in respect of the Defendant/Applicant's Notice of Motion application dated 14th January, 2025. The application is expressed to be brought under Order 50 Rule 1 & Order 40 Rule 3(1) of the Civil Procedure Rules, Sections 3A & 63 of the *Civil Procedure Act*, Section 5(1) of the *Judicature Act* and Order 52 of the Rules of the Supreme Court of England.
2. The application seeks the following orders;
 - a. Spent.
 - b. Spent.
 - c. That the contemnors herein be committed to jail for contempt of Court for disobeying the orders of this Honourable Court issued on the 8th April, 2024 and that they be kept in prison for a term not exceeding six (6) months or for such terms as this Honourable Court may deem fit to order.
 - d. That the costs of this application be borne by the said contemnors.
3. The application is based on the grounds on its face and the supporting affidavit of Josephine Chepkwony sworn on 14th January, 2025.



Factual Background.

4. The Plaintiffs/Respondents commenced the present proceedings vide the Plaint dated 30th August, 2023 where they seek the following prayers against the Defendants jointly and severally:
 - a. A declaration that they have trespassed on to the Plaintiff's aforesaid parcel of land; a permanent restraining order against the Defendants, their agents and servants from entering and remaining on the suit land and/or doing anything in any manner whatsoever on the property to the detriment of the Plaintiff and not to interfere with the Plaintiff's exclusive use, enjoyment, occupation and possession of the suit land.
 - b. That a declaration that he (sic) parcel of land known as Kericho/Kipkelion North/Block 1 (Blue Hill) 21 belongs to the late Ayub Chepkwony not Josephine Chemutai Chepkwony. to issues and costs of the suit and interest there on be borne by the Defendant. (sic)
 - c. That any other relief the Honourable Court may deem fit to grant.
5. The Defendant/Applicant filed her statement of Defence and Counterclaim dated 18th October, 2023 where she prays for;
 - a. A declaration that the Defendant (now Plaintiff) is the legal proprietor of land parcel No. Kericho/Kipkelion/North Block 1 (Blue Hills) 21.
 - b. An order of eviction against the Plaintiffs (now Defendants) by themselves, agents, servants and/or employees or any other party acting on their behalf to forthwith vacate the Defendant's (now Plaintiff) parcel of land known as LR No. Kericho/Kipkelion/North Block 1 (Blue Hills) 21.
 - c. A permanent injunction restraining the Plaintiffs (now Defendants), their servants, agents and assigns from trespassing and interfering in any way with the property and the Defendant's (now Plaintiff) right to quiet possession of all that parcel of land known as Kericho/Kipkelion/North Block 1 (Blue Hills) 21.
 - d. The OCS Kipkelion Police Station to effect compliance of the orders.
 - e. General damages for trespass.
 - f. Costs of the suit and counterclaim.
 - g. Any other relief the Court may deem fit and just to grant.
6. The application under consideration first came up on 16th January, 2025 when the Court certified it urgent
7. The Court directed that the application be served upon the Plaintiffs/Respondents and all the parties were directed to appear in Court on 4th February, 2025.
8. On 4th February, 2025, the Court upon interrogating the parties was of the opinion that the dispute giving rise to the instant application might have arisen from the fact that the orders of status quo issued on 8th April, 2024 did not define the status of the suit parcel.
9. Consequently, this court directed its Deputy Registrar to visit the suit parcel, establish the status and file a report.



10. The matter was mentioned severally to confirm the filing of the Deputy Registrar's report. On 25th February, 2025, the report having been filed, the application was reserved for ruling.
11. The relevant parts of the report, for purposes of determining this application have been reproduced in subsequent paragraphs.

The Defendant/Applicant's Contention.

12. The Defendant/Applicant contends that on 8th April, 2024 the Court issued an order that the status quo obtaining as at 8th April, 2024 be maintained pending further orders.
13. She also contends that the said order was issued in the presence of the parties together with their advocates and therefore all the parties were aware of the orders.
14. She further contends that despite the Court issuing the said orders, the Plaintiffs/Respondents entered the suit parcel and destroyed her fence and property.
15. It is her contention that the Plaintiffs/Respondents told her that there is nothing she could do to them. she adds that despite having the title deed to the parcel, she is not using the land as she used to.
16. It is also her contention that on 11th and 12th January, 2025 the Plaintiffs/Respondents in the company of a group of youthful men invaded the suit parcel, cut down mature trees, uprooted a fence and fenced off the portion she was utilizing.
17. It is further her contention that she tried to implore them to stop but they chased her away and she had to lock herself in her house for fear of being attacked.
18. She contends that she reported the matter to Kipkelion Police Station and the area Chief but the Plaintiffs/Respondents have continued to invade the suit parcel to date. She adds that on the morning of the filing of the application which was on 14th January, 2025, the Plaintiffs/Respondents were in the suit parcel with a panga and they were threatening anyone who tried to interfere with their activities.
19. She also contends that the Plaintiffs/Respondents' contention is that the suit parcel is family land and yet the land belongs to her and they (Plaintiffs/Respondents) have no interest in the land.
20. She further contends that unless the Plaintiffs/Respondents. are arrested and placed in custody, she together with her children will never enjoy the suit parcel which she acquired lawfully and procedurally.
21. She ends her deposition by stating that their entire village has been denied peace as their families have been subjected to mental torture and they can no longer use their land. She adds that it is just that the Plaintiffs/Respondents be committed to civil jail for peace to prevail.

The Plaintiffs/Respondents' Response.

22. In response to the Defendant/Applicant's application, the Plaintiffs/Respondents filed a Replying Affidavit sworn on 30th January, 2025 by Stella Chebet Chepkwony the 1st Plaintiff/Respondent.
23. She deposes that the parties in this suit are sisters and they are in occupation of the suit parcel which belongs to their late father. She adds that they are entitled to the said parcel as they are beneficiaries with vested overriding interests in law.
24. She also deposes that even though the Defendant/Applicant filed the application under consideration seeking that the Court finds them (Plaintiffs/Respondents) to be in contempt of Court, there is no proof that they were personally served with the said order.



25. She further deposes that the Defendant/Applicant was aggrieved by the orders of status quo that were issued by the Court which caused her to change her Advocates to the current Advocates on record.
26. It is her deposition that the orders of the Court were clear as they restrained the Defendant/Applicant, her servants, employees and/or agents. She adds that the Defendant/Applicant's activities on the suit parcel on 11th and 12th January, 2025 violated the orders issued by the Court on 8th April, 2024.
27. It is also her deposition that the said orders were extracted on 10th January, 2025 and she (1st Plaintiff/Respondent) served them upon one Mr. Koech the DCIO Kipkelion Police Station and his Deputy.
28. It is further her deposition that the police officers stationed at Kipkelion Police Station did not arrest the hired goons or confiscate any jembes, pangas and power saws that were used to cut down trees, fencing posts and fencing wires.
29. She deposes that the suit parcel falls under the jurisdiction of the sub county Police Commander and Officer Commanding Police Station Kipkelion where the matter was reported as destruction of a fence as per the letter of the Chief dated 13th January, 2025.
30. She also deposes that the only thing the Defendant/Applicant reported to the police was the destruction of the fence whose value is unknown.
31. She further deposes that Exhibit 3 which is attached to the Defendant/Applicant's affidavit in support of the application that constitutes photographs does not show any hired goons carrying crude weapons.
32. It is her deposition that the said photographs do not show the power saw that was allegedly used to cut down the trees and neither do they show the Plaintiffs/Respondents entering the suit parcel and destroying the fence, the barbed wires and the vegetation.
33. It is also her deposition that the Defendant/Applicant failed to disclose the type of trees that were planted and cut down and that no tree stamps were exhibited in the photographs.
34. It is further her deposition that at paragraph 4 of the Defendant/Applicant's affidavit in support of the application, the Defendant/Applicant contends that the Plaintiffs/Respondents entered the suit parcel and yet that is where they were born, raised and where they live to date.
35. She reiterates that none of the Plaintiffs/Respondents were photographed destroying the property and no evidence of a destroyed fence was adduced. She adds that there is no evidence that the Plaintiffs/Respondents told the Defendant/Applicant that there is nothing the Defendant/Applicant could do to them.
36. She deposes that the Defendant/Applicant did not disclose the date and time the said violations occurred and whether they were ever reported to the police.
37. She also deposes that the Defendant/Applicant did not disclose the parcels of land she (Defendant/Applicant) was utilizing as averred in paragraphs 4 and 5 of the affidavit in support of the application.
38. She further deposes that the Defendant/Applicant did not disclose the land parcel number of the land she had planted trees and the type of trees that she had planted together with the total acreage.
39. It is her deposition that the Defendant/Applicant has not substantiated her claim that it was the Plaintiffs/Respondents who hired goons.
40. It is also her deposition that the Defendant/Applicant did not adduce any evidence to show that it was the Plaintiffs/Respondents who chased her to her house.



41. It is further her deposition that the Plaintiffs/Respondents disassociate themselves from the allegations that they erected a new fence on the portion of the suit parcel that the Defendant/Applicant had allegedly erected a fence using indigenous trees. She adds that the trees were not exotic like pine, cedar, blue gum, gravellia and the wood fuel logs shown(sic).
42. She deposes that the chronological sequence of events was as follows; that the Court issued an order on 10th January, 2025, the purported violations allegedly occurred on 11th and 12 January, 2025 and the matter reported to both the Chief and the Police on 13th January, 2025. She adds that further violations were reported to the police on 14th January, 2025.
43. She also deposes that the Defendant/Applicant has not disclosed why she failed to report the violations on the day they occurred and even though she alluded to her life being in danger, she did not adduce any evidence in support of those allegations.
44. She further deposes that the Defendant/Applicant has not explained what happened on 11th and 12th January, 2025 as she did not scream and draw the attention of the villagers she adds that the Defendant/Applicant disappeared and resurfaced on 13th January, 2025 at 12:15 hours at Kipkelion Police Station as a victim.
45. It is her deposition that the Defendant/Applicant's narrative is inconsistent and illogical and that it is an attempt to shift blame on the Plaintiffs/Respondents for violating the orders of the Court issued on 8th April, 2024.
46. She ends her deposition by stating that there the application is defective for want of personal service and it should be dismissed and the suit be set down for hearing.

Analysis and Determination.

47. I have considered the application and the response thereto and my view is that the following issues arise for determination;
 - a. Whether the Plaintiffs/Respondents are in contempt of this Honourable Court.
 - b. Whether the Plaintiffs/Respondents should be committed to civil jail or whether they should be issued with a notice to show cause why they should not be committed to civil jail.
 - c. Who should bear the costs of this application.

A. Whether the Plaintiffs/Respondents are in contempt of this Honourable Court.

48. Section 5(1) of the [Judicature Act](#) provides as follows:

“The High Court and the Court of Appeal shall have the same power to punish for contempt of Court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate Courts.”

49. Section 29 of the [Environment and Land Court Act](#) further provides that:

“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 twenty million shillings or to imprisonment for a term not exceeding two years, or to both.”



50. In the judicial decision of *North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjohi* [2016] eKLR the Court cited excerpts of the book titled “Contempt in Modern New Zealand”. In the said book, elements of civil contempt are set out as follows;

“There are essentially four elements that must be proved to make the case for civil contempt. The Applicant must prove to the required standard (in civil contempt cases which is higher than Civil cases)

- (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the Defendant;
- (b) the Defendant had knowledge of or proper notice of the terms of the order;
- (c) the Defendant has acted in breach of the terms of the order; and
- (d) the Defendant’s conduct was deliberate.”

51. The Defendant/Applicant contends that the Court issued orders of status quo on 8th April, 2024.

52. The Defendant/Applicant also contends that despite the Court issuing the said order, on 11th and 12th January, 2025 the Plaintiffs/Respondents invaded the suit parcel and cut down trees and a fence that she (the Defendant/Applicant) had erected.

53. The Defendant/Applicant therefore contends that the Plaintiffs/Respondents are in contempt of the orders of the Court issued on 8th April, 2024.

54. The Defendant/Applicant has attached to her affidavit in support of the application, a copy of the Court order issued on 8th April, 2024. The orders issued are as follows;

- a. That the application dated 30th August, 2023 is compromised by issuance of an order that the status quo obtaining as at 8th April, 2024 shall be maintained.
- b. That the matter shall be mentioned on 14th May, 2024 to confirm filing of 3rd party application.”

55. The Defendant/Applicant has also attached a bundle of colored photographs that show trees that have been cut down.

56. A copy of OB No. 14/13/01/2025 has been attached to the affidavit in support of the application together with a letter dated 13th January, 2025 which is written by the Chief Kipchorian Location. The letter is addressed to the OCS Kipkelion Police Station and it states that the Defendant/Applicant reported to the Chief that 1st Plaintiff/Respondent destroyed her fence posts.

57. In response the Plaintiffs/Respondents depose that despite the Defendant/Applicant contending that they (Plaintiffs/Respondents) cut down trees on the suit parcel, no evidence was attached to show that they were indeed the ones who cut down those trees.

58. The Plaintiffs/Respondents also contend that they were not served with the order issued on 8th April, 2024.



59. It is important to note that on 4th February, 2025 Counsel and all the parties in this suit appeared before Court and the Court made the following orders;

“This Court has interrogated the parties in the presence of their Advocates and it is evident that failure to define the status quo is causing a problem.

Consequently I order that this mention (sic) before the Deputy Registrar of this Court today 4th February, 2025 for purposes of confirming a date for the site visit to establish the status of the suit property so that the orders of 8th April, 2024 are clear.

In the meantime parties shall file their compliance documents for purposes of hearing of the main suit.

The application dated 14th January, 2025 is deferred to 11th February, 2025.

Parties are reminded that disobedience of Court orders carries serious consequences.”

60. The Court record shows that the matter was placed before Hon. F. M Nyakundi (PM) the Environment and Land Court Deputy Registrar on 4th February, 2025 and a site visit took place on 5th February, 2025.

61. The Deputy Registrar filed his report dated 21st February, 2025 where he states that during the site visit to confirm the status quo, he observed that a few indigenous trees had been cut down. His observations are reproduced as hereunder;

“I have considered the sentiments raised by both parties and the observation made at the site, this Court is unable to ascertain who among the two cut the trees in total disregard of the orders

issued by the judge on status quo. I note that the piece of land where the trees were cut is fully occupied by the Plaintiff and it was unlikely that the Defendant could have gone to that piece of land and start to cut trees. I note that the trees cut were indigenous and were almost ten to 15 trees in a piece of land approximately 63 acres. This Court was not able to get an eye witness who saw when the trees were cut down. In the absence of any eye witness, it was not possible to lay fault to either the Plaintiff or the Defendant with certainty.”

62. As aforementioned, the Defendant/Applicant contends that the Plaintiffs/Respondents violated the orders of the Court issued on 8th April, 2024 by cutting down trees and destroying a fence.

63. In response, the Plaintiffs/Respondents deny that they destroyed the said trees and fence.

64. The Plaintiffs/Respondents have also alleged that they were not served with the orders of this court and cannot therefore be found to have notice of them and consequently in disobedience of the said orders.

65. This argument put forth by the Plaintiffs/Respondents’ cannot hold. The question of notice of court orders has been dealt in numerous cases. Notable, among them, is the decision in *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR. It was observed as follows;

On the other hand however, this Court has slowly and gradually moved from the position that service of the order along with the penal notice must be personally served on a person before contempt can be proved. This is in line with the dispensations covered under 81.8 (1) (supra).



Kenya's growing jurisprudence right from the High court has reiterated that knowledge of a court order suffices to prove service and dispense with personal service for the purposes of contempt proceedings. For instance, Lenaola J in the case of Basil Criticos Vs Attorney General and 8 Others [2012] eKLR pronounced himself as follows:

“...the law has changed and as it stands today knowledge supersedes personal service.....where a party clearly acts and shows that he had knowledge of a Court Order; the strict requirement that personal service must be proved is rendered unnecessary”

This position has been affirmed by this Court in several other cases including the Wambora case (supra).

It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or notice of the existence of the order of the Court forbidding it. The threshold is quite high as it involves possible deprivation of a person's liberty. This standard has not changed since the old celebrated case of Ex parte Langley 1879, 13

Ch D. 110 (C.A), where Thesiger L.J stated as follows. at p. 119:

“...the question in each case, and depending upon the particular circumstance of the case, must be, was there or was there not such a notice given to the person who is charged with contempt of Court that you can infer from the facts that he had notice in fact of the order which has been made” And, in a matter of this kind, bearing in mind that the liberty of the subject is to be affected, I think that those who assert that there was such a notice ought to prove it beyond reasonable doubt.”

What then amounts to “notice”

Black's Law Dictionary, 9th Ed defines notice as follows:

“A person has notice of a fact or condition if that person Has actual knowledge of it;

Has received information about it;

Has reason to know about it;

Knows about a related fact;

Is considered as having been able to ascertain it by checking an official filing or recording.”

Would the knowledge of the judgment or order by the advocate of the alleged contemnor suffice for contempt proceedings” We hold the view that it does. This is more so in a case such as this one where the advocate was in Court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in court on instructions of a party, then it behoves him/her to report back to the client all that transpired in court that has a bearing on the client's case. This is the position in other jurisdictions within and outside the commonwealth.

66. It is not in dispute that the Court issued orders of status quo on 8th April, 2024. It is equally not in dispute that trees planted on the suit parcel were cut down.
67. What is in dispute is who cut down the trees and whether the person/ persons who cut the trees is a party or are parties to this suit which would then mean that the said person/ persons are in violation of the orders of status quo issued on 8th April, 2025.



68. The Hon. Deputy Registrar conducted a site visit. According to his report, he states that it is not clear who cut down the trees.

69. In *Gatharia K. Mutikika v Baharini Farm Limited* [1985] KLR 227, it was held as follows;

“A contempt of Court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature. However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge...Recourse ought not to be had (sic) to process of contempt of Court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the party (sic) of the Judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject...applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the Court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.”

70. The Plaintiffs’/Respondents’ liberty is at stake. The Defendant/ Applicant must place before this court evidence that points to the fact that the Plaintiffs’/Respondents’ are in willful disobedience of an order of this court. i.e.

- a. They have acted in breach of the terms of the order; and
- b. Their conduct was deliberate.

71. In the absence of this evidence, it is impossible to state with certainty that the Plaintiffs/Respondents are in contempt of the orders of this Honourable Court.

B. Whether the Plaintiffs/Respondents should be committed to civil jail or whether they should be issued with a notice to show cause why they should not be committed to civil jail.

72. Given my finding on issue (a) above, the question of committal to civil jail and/or issuance of a notice to show cause is not ripe for determination.

D. Who should bear costs of the application.

73. On the question of costs, it is now settled that costs shall follow the event. This is in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

Disposition.

74. Taking the foregoing into consideration, I find that the Defendant/Applicant’s application dated 14th January, 2025 lacks merit and it is hereby dismissed with costs to the Respondents.

75. It is so ordered.



DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 13TH DAY OF MARCH, 2025.

L. A. OMOLLO

JUDGE.

In the presence of

Mr. Nyangiri for the Respondents

Mr. Mwita for the Applicant

Court Assistant; Mr. Joseph Makori.

