



**Kirongo v Jerotich (Environment & Land Case E006 of 2023)  
[2023] KEELC 20236 (KLR) (25 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20236 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT & LAND CASE E006 OF 2023  
MN MWANYALE, J  
SEPTEMBER 25, 2023**

**BETWEEN**

**JULIUS KIPKURGOI KIRONGO ..... PLAINTIFF**

**AND**

**ZEDDY JEROTICH ..... DEFENDANT**

**RULING**

1. This Ruling relates to two applications, the first application being the Notice of Motion dated May 2, 2023 filed by the Defendant as the Applicant and primarily seeks to review orders issued by this Court on March 13, 2023 and additional the Applicant be granted leave to file a response as regards the application dated 27<sup>th</sup> day of February, 2023.
2. The second application is the Application dated May 8, 2023 by the Plaintiff as the Applicant seeking committal of the Defendant for contempt of Court, of the orders issued on March 13, 2023.
3. In support of the first application the Applicant states that when the orders were issued she had already carried on her activities and had planted maize on the suit land.
4. That there is an error apparent on the face of the record, being that the Court issues orders restraining the Defendant from carrying out activities in the suit land in which the Defendant had been in occupation and had planted maize 5. That the application that gave the orders was not served upon the Defendant and the Defendant did not file a response thereto.
6. That the Defendant's counsel on record had duly entered appearance and filed a memorandum of appearance on the main suit, without being aware of the contents of the application filed against the Defendants.
7. The grounds were reiterated in the supporting affidavit which has annexed copies of photographs of the maize planation, and a copy of a Grant of Letters of Administration.



8. No replying affidavit was filed in response to the 1st application at least none was on record at the time of writing the ruling, so essential the first application is unopposed but the Court will subject the same to a merit review nonetheless.
9. On the 2<sup>nd</sup> application, the same is grounded on grounds that despite service of Court orders on March 17, 2023 at Silverline Hotel Eldoret, the Defendant on 18/3/2023 contrary to the orders went ahead to plant maize, which was an act meant to defeat justice and the same are in total disregard to the Court order and blatant disrespect for the same.
10. The Affidavit in support of the application, the Applicant has annexed an affidavit of service dated March 17, 2023, the order of March 13, 2023, and copies of OB Reports at Mosoriot Police Station.
11. In opposition to the 2<sup>nd</sup> application the Respondent Zeddy Jerotich filed a Replying Affidavit, which she depones inter alia, that she was not aware of the orders issued 13/3/2023. As at 17/3/2023 she had planted maize, and she was served via WhatsApp on 20/3/2023 and not on 17/3/2023 as claimed by the process server.
12. That she had already planted maize by the time the orders of 13/3/2023 were served upon her and thus there was no any willful and/or intentional act of contempt on her part, she depones.
13. Parties were directed to file submissions on both applications.
14. The first application is an application for review is founded on Section 80 of the *Civil Procedure Act* as well as Order 42 Rule 6 and order 45 Rule 1 of the *Civil Procedure Rules*.
15. The basis upon which a Court can be moved to review its orders are;
  - i) error apparent on the face of record
  - ii) discovery of new evidence, previously not available or other sufficient grounds.
16. The 1<sup>st</sup> application has been premised on the ground of an error apparent on the face of the record, and as observed in earlier in paragraph 8 of this ruling, the 1<sup>st</sup> application was not opposed but shall now be subjected to a merit review.
17. The error apparent on the face of the record alluded to by the Applicant is that the Court proceeded to give an order restraining the Defendant from carrying out activities in the suit land in which the Defendant has been in occupation and use and the same was unforeseen by the Defendant.
18. I have perused the submissions filed by the parties on record and the issue for determination with regard to the 1<sup>st</sup> application, is whether the application has satisfied the principles for a Review.

In the decision in the case of *Kenya Orient Insurance vs Zachary Nyambane* (2021) eKLR, the Court quoted the decision of the Supreme Court of Uganda in *Edison Kanyabwera vs Pastor Tumwebaze* (2005) where the said court with reference to an error apparent on face record where the Court defined an error apparent on face on record in “ it is stated that in order that an error may be a ground for review, it must be one apparent on the face of record. I.e. an evident error which does not require any extraneous matter to show its incorrectness. It must be an error so manifest and clear that no Court would permit such an error to remain on the record. The error must maybe one of fact, but it is not limited to matters of fact, and includes also error in law.”



19. The Court of Appeal in the case of *National Bank of Kenya vs Ndugu Njau* (1997) eKLR equally observed the following.

“A review may be granted whenever the Court considers that it is necessary to correct an apparent error or commissions on the part of the Court. The error or omission must be self – evident and should not require an elaborate argument to be established.”
20. Examining the grounds of the application against the above principle, the Court is not convinced that there is an error apparent on the face of record entitling the Applicant for a review and the first application as drawn does not succeeded.
21. On the 2<sup>nd</sup> application, the same seeks to commit the Respondent for contempt of Court.
22. The Applicant places the contempt to have occurred on March 18, 2023 when after service of the orders on March 17, 2023, the Respondent disputes service of the order on March 17, 2023, but concedes to service on March 20, 2023.
23. For a contempt application to be successful, the Applicant must show
  - i) whether there was a valid Court order
  - ii) whether the same was served upon the alleged contemnor and
  - iii) whether the contemnor willfully disobeyed the same.
24. It is not in contention that this Court on March 13, 2023 issued a temporary prohibitory injunctive order against the Defendant.
25. The said order has been annexed by both the Applicant and the Respondent in their respective application and affidavits.
26. With regard to service of the order, the Applicant in his application states that the order was served on March 17, 2023 and planting was done on March 18, 2023. The Respondent on her part denies service of the order was done on March 17, 2023 but concedes that the same was effected via WhatsApp platform on March 20, 2023.
27. If indeed service had been done on March 17, 2023, as the Applicant would like the Court to believe why was it again effected via WhatsApp on March 20, 2023.
28. The Court is not satisfied that service of the order was effected on March 17, 2023, but the same was effected on March 20, 2023 after the planting had been done.
29. The OB reports alluded top by the Applicants equally were not made in march 2023 but in February 2023.
30. Accordingly and having found that there was no service of the Court Orders on March 17, 2023, before the planting was done on March 18, 2023, it follows orders that there was no contempt of the orders issued by Court, and the 2<sup>nd</sup> application consequently fails and it is dismissed.
31. From both these applications, the one for review and the one for contempt the common denomination, is that there is in existence a temporary prohibitive injunctive order in force, and that the Respondent planted maize before service of the orders upon her.
32. Whereas the review application did not succeed as there was no error apparent on face on record, photographs of the maize crops have been annexed, under the inherent powers of this Court under



Section 3A of the *Civil Procedure Act*, I hereby vary the orders issued on March 13, 2023 to the extent of allowing the Respondent to harvest the maize so planted in March 2023 and after the harvest the orders issued on March 13, 2023 shall take effect.

33. The harvest of the maize to be done during the current harvesting period but not later than October 15, 2023 when the orders issued on March 13, 2023 shall take effect.
34. Costs of both applications shall be in the cause.

**DELIVERED AND DATED AT KAPSABET THIS 25<sup>TH</sup> SEPTEMBER 2023.**

**Hon. M. N. Mwanyale,**

**JUDGE**

**In the presence of;**

Mr. Sambu for the Plaintiff

Mr. Korir for the Defendant

