



**Cherono (The administrator of the Estate of the Late Henry Cherono) v Rotich (Miscellaneous Application E001 of 2023) [2023] KEELC 21867 (KLR) (27 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21867 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KABARNET**  
**MISCELLANEOUS APPLICATION E001 OF 2023**  
**L WAITHAKA, J**  
**NOVEMBER 27, 2023**

**BETWEEN**

**LINA KIMOI CHERONO (THE ADMINISTRATOR OF THE ESTATE OF THE LATE HENRY CHERONO) ..... DECREE HOLDER**

**AND**

**WILSON K ROTICH ..... JUDGMENT DEBTOR**

**RULING**

1. Lina Kimoi Cherono (hereinafter referred to as the Applicant) filed the application dated 13<sup>th</sup> day of July, 2023 seeking the following orders against the respondent:-
  - a. Spent
  - b. That a Notice to Show Cause (NTSC) does issue to the judgment debtor respondent to attend court and respond to contempt proceedings filed herewith in relation to the Judgment and Decree issued in Kabarnet Chief Magistrate's court ELC No 7 of 2017;
  - c. That this honourable court be pleased to find the Judgment Debtor/Respondent is herein in contempt of the Judgment in Kabarnet Chief Magistrate's court ELC No 7 of 2027 on the 13th day of May 2019 and the subsequent Decree issued therein on the 15<sup>th</sup> day of December 2022;
  - d. That the Honourable Court be pleased to order that the Judgment Debtor/Respondent herein does hand over the premises subject matter of the Decree to the Decree holder forthwith and the said hand over be supervised by the OCS Tenges Police Station
  - e. That this Honourable Court having found the Judgment Debtor/Respondent in contempt of the Judgment and Decree above stipulated does order the Judgment Debtor/Respondent to be arrested and be sentenced and/or committed to civil jail for a period to be determined



by this honourable court and also to pay a sum of money as penalty to be determined by this Honourable Court for deliberately acting in contempt of the said Judgment/Decree by breaking all the padlocks placed on the premises by a Senior Court Bailiff on the 7<sup>th</sup> day of March 2023 after execution.

- f. That costs of this suit be personally borne by the Judgment Debtor/Respondent.
2. The application is premised on the grounds on its face and is supported by the affidavit of the decree/holder applicant sworn in support of the application.
3. The application is opposed through the replying affidavit of the respondent sworn on 18<sup>th</sup> September 2023.

#### **Legal Propriety or otherwise of the application**

4. From the face of the application and the reliefs sought, it is clear that the decree or order sought to be enforced is that of the lower court.
5. The foregoing observation brings into focus sections 28, 29, 30, 31, 32 and 33 of the [Civil Procedure Act](#) which provide as follows:-

“28. The provisions of this Act relating to execution of decrees shall, so far as they are applicable, be deemed to apply to the execution of orders.

29. The expression “court which passed a decree,” or words to that effect, shall, in relation to the execution of decrees, except where the context otherwise requires, include-

(a). where the decree to be executed has been passed in the exercise of appellate jurisdiction, the court of first instance; and

(b). where the court of first instance has ceased to exist or to have jurisdiction to execute it, the court which, if the suit wherein the decree was passed were instituted at the time of making the application for execution of decree, would have jurisdiction to try such suit.

30. A decree may be executed either by the court which passed it or by the court which it is sent for execution.

31.

(1). The court which passed a decree may, on the application of the decreeholder, send it for execution to another court-

(a). if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of that other court; or

(b). If such person has no property within the local limits of the jurisdiction of the court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other court; or



- (c). if the decree directs the sale or delivery of immovable property situated outside the local limits of the jurisdiction of the court which has passed it; or
    - (d). if the court which passed the decree considers for any other reason, which it has recorded in writing, that the decree should be executed by such other court.
  - 2. The court which passed a decree may of its own motion send it for execution to any other court of inferior but competent jurisdiction.
- 32. The court to which a decree is sent shall certify to the court which passed it the fact of such execution, or where the former court fails to execute the same the circumstances attending such failure.
- 33.
  - (1). The court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself.
  - (2). All persons disobeying or obstructing the execution of the decree shall be punishable by such court in the same manner as if it had passed the decree; and its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.”
- 6. It is clear from the above provisions of the law that the primary duty or obligation in executing a decree or order of the court vests with the court which passed the decree or order.
- 7. It is also clear that for reasons provided in section 31(2) of the *Civil Procedure Act* or for any other reason, which reason has to be recorded by the court which passed the decree, the court which passed the decree may send the decree or order for execution by another court but of inferior but competent jurisdiction.
- 8. It is clear from the above provisions of the law regarding execution of decrees/orders and punishment in respect thereof, that the law does not contemplate a situation where a decree of an inferior court is sent to a superior court for execution. The reasons why the law does not contemplate such an eventuality is that the court to which the decree is sent for execution is required to certify to the court which passed it, the fact of such execution which may pose challenges if a lower court were to require a court which it reports to give such an account. Secondly, the decision of the court which passed the decree/order concerning its execution or punishment arising therefrom is subject to appeal to the relevant appellate court.
- 9. Arising from the foregoing analysis of the law, it is the considered view of this court that the application herein is fatally defective as it seeks to divest the court which issued the decree/order, the jurisdiction vested in it to determine issues arising out of its decree/order and to punish for contempt of its decree/order. It also seeks to cloth this court with original jurisdiction to enforce the decree/order of the court yet it does not have such jurisdiction.



10. The upshot of the foregoing is that the notice of motion application dated 13<sup>th</sup> September, 2023 is bad in law. Consequently, I dismiss it with costs to the respondent.

Orders accordingly.

**DATED, SIGNED AND DELIVERED THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**L. N. WAITHAKA**

**JUDGE**

In the presence of:

Mr. Olonyi for the Applicant.

Mr. Kipkuto for the Respondent.

