



**Tenai v Kirongo (Environment & Land Case 99 of 2021)  
[2022] KEELC 2345 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2345 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT & LAND CASE 99 OF 2021**

**MN MWANYALE, J**

**MAY 26, 2022**

**BETWEEN**

**ESTHER TENAI ..... RESPONDENT**

**AND**

**ROSALIA CHEMATIA KIRONGO ..... DEFENDANT**

**RULING**

1. Before the Court for determination is the Notice of Motion application dated February 11, 2022, which seeks orders *inter alia*;
  - a) That the Court be pleased to cite the Plaintiff/Respondent for contempt of Court and to commit her to civil jail for six (6) months.
  - b) Plaintiff Respondent be denied audience before this Honourable Court until such time as she shall have purged her contempt.
2. The Application is based on grounds *inter alia*
  - i) That the Honourable Court on March 24, 2021, granted status quo orders to be maintained which status quo was defined to be what was prevailing at the time of filing the application dated March 10, 2020.
  - ii) That the Respondent extracted the said order and that the Respondent was thus aware of the said order.
  - iii) That the status quo obtaining at the time of filing the application dated March 10, 2020 was that Barnaba Arusei Talam, the son to the Defendant was residing on the suit property and undertaking farming activities.



- iv) That the Plaintiff/Respondent in the company of more than 50 young men who were heavily armed with bows, arrows, machetes and crude weapons, trespassed into the suit property and chased away the son of the Applicant and his entire family.

Plaintiff/Respondent and the said armed men thereafter oversaw the ploughing of the suit property using a tractor. That the actions of the Plaintiff/Respondent amounted to wilful disobedience of a valid Court orders.

3. The application is further supported by the annexed affidavit of the Applicant in which she deponed and reiterated the grounds in support of the application, together with support of the application, together with annexures including photographs showing armed men of the suit property, and tractors.
4. In response to the application, the Plaintiff/Respondent has filed a Replying Affidavit. In the said affidavit, the Respondent depones interalia that;
- i) She was aware of the fact that the application dated March 10, 2020 was compromised by orders that the status quo prevailing at the time of filing the application be maintained.
- ii) that she is not in contempt as the Applicant has not shown that she illegally assured occupation during the pendency of the suit when the status quo obtaining on or before March 10, 2020 was that she was in peaceful, open and uninterrupted and/or in continuous occupation.
5. The Respondent thus prays for the application to be dismissed.
6. Parties were directed to file written submissions and at the time of writing this ruling, only the Defendant/Applicant had filed their submissions.
7. On March 24, 2022 when the matter was lastly in Court, Mr. Melly for the Plaintiff/Respondent sought for 7 days to file his submissions but had not filed the said submissions by the time of writing this ruling.
8. In *Jiahn Freighters Ltd -vs- Hardward General Stores Ltd*. The Court observed that to sustain a case of contempt, the order that is alleged to have deliberately been disobeyed must be clear and precise, so as leave no doubt as to what a party was supposed to do or refrain from doing.
9. The General principles with regard to contempt application are cited in the case of *Kristen Carla Burchell -vs- Burry Grant Burchell* (Case No. 364/2005) cited in the case in *Katsuri Limited -vs- Kapurchand Deour Shah* (2016) eKLR
- i) There was an order/direction capable of being obeyed or disobeyed.
- ii) The offending party had knowledge of the said order
- iii) That the offending party had breached and/or continues to breach the said orders.
10. In the Court of Appeal in *Mutika -vs- Babarini Farm* (Nai Civil Application No. 24/1985 stated that the standard of proof in contempt cases and in committal proceedings is higher than a balance of probabilities though not as high as proof beyond reasonable doubt.
11. The Court has been presented with two rival positions, both on oath. Whereas the Defendant/Applicant states that her son was in actual possession of the suit property at the time of filing the application dated March 10, 2020, the Plaintiff/Respondents also depones that she was in actual position.



12. Indeed both parties could have been in actual occupation of the suit properly at the time of filing of the application dated March 10, 2020.
13. Turning to the submissions, on record the Defendant/Applicant submits on the principles applicable when dealing with contempt cases and has cited the case of *Samuel M.N. Mweru 2 others -vs- National Land Commission and 2 others* (2020 eKLR); which principles are similar to the ones established in Kristen Carla above, save for the additional; principle that the Defendants conduct was deliberate.
14. The Applicant submits that the order issued by the Court was clear and ambiguous. The Defendant further submits that it is her son Barna Arusei who was in occupation of the suit property, as indicated in her supporting affidavit dated February 11,2022.
15. The Defendant further submits that the entry by the Plaintiff on January 8, 2022 accompanied by 50 youths was meant to gain possession that she did not have and the same amounted to trespass; and eviction of Barnaba Arusei Talam, and his entire family.
16. The Defendant further submits that even if the Plaintiff was occupying 7.5 acres, at the time of filing the application, his entry with 50 young men, ploughing the entire suit property, in breach of the valid court order.
17. The Applicant in further submissions to the start that the action by the Plaintiff to plough the whole suit properly is contemptuous of the valid Court, and was wilful disobedience of the Court order, since the Plaintiff's claim related only to 7.5 acres thereof, and not the entire suit properly and eviction of the Defendant's sons, Barnaba Arusei Talam was equally contemptuous.
18. As indicated earlier in this Ruling, the Plaintiff/Respondent did not file submissions.

**Analysis and Determination:**

19. The suit property herein measures 6.2 Ha, according by the Replying Affidavit of Rosalia Chematia Kirongo deponed on 4<sup>th</sup> March 2021, in response to the originating summons.
20. In the Originating Summons as well as the Notice of Motion application dated March 10, 2020together with the supporting affidavit in support of the Notice of Motion application, the Plaintiff/Respondent claim is in respect of 7.5 acres bought by her late husband.
21. As observe earlier, both the Plaintiff/Respondent and the Defendants son deponed in their affidavits that at the time of filing the application dated March 10, 2022, they were in occupation of 7.5 acres out of the 6.2 hectares.
22. The Court is thus persuaded that both the Plaintiff/Respondent and the Defendant/Applicant's son were on the suit property. And that the Plaintiff/Respondents was occupying 7.5 acres within the suit property and farming thereon and that the son of the Defendant/Applicant must have been occupying somewhere else in the property.
23. For the Plaintiff/Respondent to therefore, in the company of 50 armed men, to evict the son of the Defendant/Applicant and cultivate the whole 6.2 Hectares is therefore not the status quo at the time of filing of his injunction application dated March 10, 2020.
24. The Court finds that the Plaintiff/Respondent action of evicting the Defendant/Applicants son from the part of the property that he was occupying, and cultivating the whole property of 6.2 Hactares and not the 7.5 acres she purported to be staying, a breach of the valid Court order.



25. On the standard of proof required the Court is satisfied that the principles to be met in an contempt application have been met as it demonstrates herein.
26. The Plaintiff/Respondent by her own admission was aware of the Court order, having extracted the same.
27. That the Court order required parties to maintain status quo as at the time of filing the application dated March 10, 2020.
28. At the time of filing the said application, and as deposed in the affidavits before Court, the Plaintiff/ Respondent was in occupation of 7.5 acres out of the 6.2 Hectares there is no justification therefore for the Plaintiff/Applicant to have evicted the Defendant/ Respondent son from the area that he and his family resided.
29. The Court finds and holds that the Plaintiff/Respondent to be in contempt of the orders it issued and the contempt must thus be punished.
30. It is so ordered.

**DATED AND DELIVERED IN KAPSABET THIS 26<sup>TH</sup> DAY OF MAY, 2022.**

**HON. M. N. MWANYALE,**

**JUDGE**

**In the presence of:**

**Mr. Lagat for the Defendant/Applicant**

**Mr. Melly for the Plaintiff/Respondent**

