



**Cherutich v Chesaro (Environment & Land Case 112 of 2014)
[2022] KEELC 15227 (KLR) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15227 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 112 OF 2014
EO OBAGA, J
NOVEMBER 24, 2022**

BETWEEN

AYABEI CHERUTICH PLAINTIFF

AND

TAPNYABEI CHESARO DEFENDANT

RULING

1. This is a ruling in respect of Notice of Motion dated 15th July, 2022 in which the Plaintiff/Decree holder Applicant sought the following orders:-
 1. Spent
 2. The Judgment debtor/Citee be ordered to attend court in person at the hearing of this application.
 3. The Honourable court do find the Judgment Debtor/Citee in contempt of the Decree and order of the court issued on 19/12/2019.
 4. The Judgment debtor/Citee be convicted for contempt of court order and Decree issued on 19th December, 2019.
 5. The Judgment Debtor/Citee be: -
 - i. Sentenced to 6 months' imprisonment.
 - ii. Ordered to pay a fine in the sum of Kshs 200,000/=
 6. The Judgment Debtor/Citee be ordered to purge the contempt by removing the fence illegally erected in land parcel Baringo/Kapropita/309 in contravention of the Decree issued on 13/06/2019.



7. Costs.
2. The Applicant served the application upon the Defendant/Judgment debtor Respondent but the Judgement Debtor Respondent neither filed grounds of opposition nor replying affidavit. The Applicant contends that he obtained judgment in his favour on 24th September 2018. The court in the said judgment found that the Respondent had encroached on to Applicant's land by 0.2 hectares.
3. The Respondent was ordered to vacate the encroached portion within 30 days failing which she was to be evicted. The Respondent did not vacate and an eviction was issued against her. She was subsequently evicted.
4. On 16th June, 2022 the Respondent brought in a surveyor who resurveyed the suit property and proceeded to erect a new fence. The Applicant therefore contends that the Respondent is in contempt of court and should thus be punished.
5. I have gone through the application as well as the annexures. The only evidence of the alleged encroachment are copies of photographs showing a barbed wire fence. It is not clear where the fence which was placed pursuant to the execution was and where the new fence erected by the Respondent is. There is no survey report to confirm whether indeed the fence has been removed from where it had been fixed after execution and where it allegedly is. In the absence of this important evidence, the court has no basis of making a finding that there is any contempt.
6. Contempt of court is a quasi criminal offence and one may lose his/her freedom. There must therefore be proper proof of the alleged contempt. I find that the Applicant's application lacks merit. The same is dismissed with no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 24TH DAY OF NOVEMBER, 2022.

E. O. OBAGA

JUDGE

In the virtual presence of;

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Court Assistant –Albert

E. O. OBAGA

JUDGE

24TH NOVEMBER, 2022

