



**Choge v Kipchirchir & 4 others (Environment & Land Case
38A of 2021) [2022] KEELC 15422 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15422 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 38A OF 2021**

**EO OBAGA, J
DECEMBER 20, 2022**

BETWEEN

ABRAHAM KIPROP CHOGE APPLICANT

AND

JAMES KIPCHIRCHIR 1ST DEFENDANT

CHEPTORUT BIWOTT 2ND DEFENDANT

JOSEPH KIBIWOTT 3RD DEFENDANT

ABRAHAM KIPKORIR LIMO 4TH DEFENDANT

DAVID CHELULE 5TH DEFENDANT

RULING

1. This is a ruling in respect of Notice of motion dated March 10, 2022 in which the Plaintiff/Applicant seeks to have the Defendants/Respondents committed to Civil jail for contempt of court order given on November 29, 2021.
2. The Applicant contends that he obtained a court order on November 29, 2021 which restrained the Respondents from in any way interfering with LR No Plateau/Kipkabus Block 4 (Lelmokwo)/24 which is registered in his name. The extracted order which contained a penal clause was served upon the Respondents and their lawyer on December 6, 2021.
3. The Applicant states that despite the Respondents and their lawyer being served with the court order, the Respondents went ahead to plough sections of the suit property on diverse dated between February 15, 2022 and March 2, 2022. The Applicant annexed photographs confirming the ploughing by the Respondents.



4. The Applicant therefore contends that the Respondents are in contempt of court order and ought to be punished to restore the dignity of the court. On July 7, 2022, the court granted the Respondents 14 days within which to respond to the application for contempt. The court gave further directions that the Applicant was to file and serve written submissions within 7 days of being served with replying affidavit. The Respondents were granted 7 days to file their submissions upon being served by the Applicant.
5. Three months after directions had been given, the Respondents had not filed a response to the Applicant's application. Their effort to seek more time was rejected by court on October 17, 2022.
6. I have considered the Applicant's application which is not opposed. The only issue for determination is whether the Applicant has proved that the Respondents are in contempt of court. For one to prove contempt, there must be evidence that there was a valid court order given restraining the Respondents from doing or not doing a certain activity. There must also be evidence that the court order was served or that the alleged contemnor was aware of it. There must also be evidence that the contemnor deliberately disobeyed the court order.
7. In the instant case, the court gave an order on November 29, 2021 restraining the Respondents from encroaching, trespassing alienating, occupying, cultivating, claiming, leasing or interfering with the applicants' occupation of Plateau/Kipkabus Block 4 (Lelmokwo)/23. The court order was issued on December 6, 2021.
8. The issued order was served upon the Respondents and their lawyer as confirmed by the affidavit of service sworn on December 8, 2021.
9. There is evidence in form of photographs that there was ploughing of sections of the suit property. This being the case, the Applicant has proved all the ingredients of contempt of a court order. Besides the contemnors being served, their lawyer was also served. As the lawyer came to court seeking for time to respond to the application, it is clear that he must have informed the contemnors of the same and explained to them the consequences of non-compliance with court orders.
10. It is therefore clear that the contemnors deliberately disobeyed the court orders. Court orders are meant to be obeyed. It is a recipe for chaos if parties were to disobey court orders with impunity. I find that the contemnors are guilty of contempt of the court order given on November 29, 2021 and issued on December 6, 2021. The five contemnors are directed to come to court on a date to be given after delivery of this ruling so that the court can issue further orders regarding the contempt. The contemnors shall pay costs of this application.

It is so ordered.

DATED, SIGNED and DELIVERED at ELDORET on this 20th day of DECEMBER, 2022.

E. O. OBAGA

JUDGE

In the virtual presence of;

Ms. Otuma for Mr. Omusundi for Defendant.

Court Assistant –Albert

E. O. OBAGA

JUDGE



20TH DECEMBER, 2022

