



**Jerotich v Twei (Environment & Land Case 333 of 2014)
[2022] KEELC 15246 (KLR) (8 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15246 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 333 OF 2014**

**EO OBAGA, J
DECEMBER 8, 2022**

BETWEEN

VERONICAH KIPTOO JEROTICH PLAINTIFF

AND

FRANCIS CHEPKOK TUEI DEFENDANT

RULING

1. This is a ruling in respect of notice of motion dated February 3, 2022 in which the plaintiff/applicant seeks the following orders: -
 1. Spent
 2. Spent
 3. The defendant/respondent Francis Chepkok Tuei is hereby ordered to attend court and show cause why he should not be committed to civil jail for a period of 2 years and/or his property to be ascertained and attached for being in disobedience and/or breach of court orders given/made on December 8, 2014.
 4. In default of attendance as per prayer 3 above, warrant of arrest to be issued against the defendant herein Francis Chepkok Tuei to be executed by O.C.S Eldoret police station and have him brought to court immediately.
 5. The court be and hereby pleased to declare the defendant/respondent herein Francis Chepkok Tuei to be in contempt of court order made on the December 8, 2014 and subsequently do order that he be committed to civil jail for a period of 2 years and /or his properties to be ascertained and to be attached forthwith.
 6. The costs be provided for.



2. The applicant is a wife to the defendant/respondent but they have separated. The applicant filed a suit against the respondent on November 4, 2014. She contemporaneously filed an application for injunction seeking to restrain the applicant from evicting her from LR No Kiplombe/Kiplombe Block 10 (Growel)/132 (suit property) or in any way interfering with the same.
3. On December 8, 2014, the applicant's application for injunction was allowed as prayed as the respondent did not file opposition against it.
4. In the present application, the applicant contends that the respondent has gone against the orders of December 8, 2014 in that he is threatening to evict the applicant from the suit property through auctioneers yet there is no court order sanctioning the eviction.
5. The applicant states that the orders of December 8, 2014 were served upon the respondent and that the suit is still pending and the orders are in force. She therefore prays that the respondent be summoned to show cause why he should not be punished for contempt of court order.
6. The respondent did not file a replying affidavit or grounds of opposition to the applicant's application. I have considered the applicant's application as well as the submissions. The only issue for determination is whether the applicant has met the threshold required for one to be found guilty of contempt of a court order.
7. In an application for contempt of court, an applicant has to demonstrate that there was a valid court order given; that the order was served upon the contemnor or that the contemnor was aware of it and that the contemnor deliberately failed to comply with the order.
8. In the instant case, there is no doubt that the court granted an injunction against the respondent on December 8, 2014. The injunction among others restrained the respondent from evicting the applicant from the suit property. The order was extracted and issued on December 11, 2014.
9. The critical question to be answered by this court is whether the extracted order was served upon the respondent or whether the respondent had knowledge of it. When the order was given on December 8, 2014, the respondent was not in court as he neither filed replying affidavit nor grounds of opposition.
10. There is no evidence in form of an affidavit of service to show that the respondent was served with the extracted order. The applicant has merely annexed the extracted order without an affidavit to confirm whether the respondent was served. This being the case, I find that there has been no prove of service and one cannot be guilty of contempt when it is not shown that he was served with the court order. I therefore find no merit in this application which is dismissed with no order as to costs. The applicant should make sure that she prosecutes this suit within six months failing which the same will stand dismissed automatically without any further recourse to this court.
11. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 8TH DAY OF DECEMBER, 2022.

E. O. OBAGA

JUDGE

In the virtual absence of parties.

Court Assistant –Albert

E. O. OBAGA

JUDGE



8TH DECEMBER, 2022

