



**Mutai (Suing as the administrator of the Estate of the Late Joseph Kiptum Bitok) v Chelulei  
(Environment & Land Case E007 of 2023) [2024] KEELC 4074 (KLR) (8 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4074 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE E007 OF 2023**

**EO OBAGA, J**

**MAY 8, 2024**

**BETWEEN**

**KENNETT KIBIWOTT MUTAI (SUING AS THE ADMINISTRATOR OF THE  
ESTATE OF THE LATE JOSEPH KIPTUM BITOK) ..... PLAINTIFF**

**AND**

**ELPHAS RONO CHELULEI ..... DEFENDANT**

**RULING**

1. This is a ruling in respect of notice of motion dated 16.1.2024 in which the Plaintiff/Applicant seeks the following orders:-
  1. Spent
  2. That the Honourable court do find Elphas Rono Chelulei the Respondent to be in contempt of the orders made and issued by this Honourable court on 16<sup>th</sup> March, 2023.
  3. That upon finding of contempt, the Honourable court be pleased to commit the said Elhas Rono Chelulei to civil jail for at least six months and or be fined accordingly.
  4. That the costs of this Application be provided for.
2. The Applicant contends that this court granted an injunction on 15.3.2023 restraining the Defendant/Respondent from interfering with a house on LR. No. Kapsaret/Kapsaret Block 6 (Kamoson)/15. The order was issued on 16.3.2023 and served upon the Respondent on the same day.
3. Despite the Respondent being served with the order which contained a penal notice, he has disobeyed it by occupying the house which is on the suit property. The Applicant therefore wants the Respondent to be punished to contempt to restore the dignity of the court.



4. The Respondent opposed the application based on a replying affidavit sworn on 29.1.2024. The Respondent denies ever being served with any order and denies any knowledge of the same. He states that as he was not served with the order within 3 days, the same lapsed and that he cannot therefore be convicted for contempt.
5. He states that on the day the process server states that he served him, he had left his home in the company of his worker at 8.00a.m for Tuyo Farm where he went to plant maize. He did not return until 6.00p.m.
6. In a further affidavit, the Applicant states that on the material day, the Respondent did not leave home and that the order was served on the very day it was issued.
7. The Applicant filed his submissions on 6.2.2024. The Respondent filed his submissions on 28.2.2024. I have gone through the submissions. The only issue for determination is whether the Applicant has proved that the Respondent is in contempt of the court order given on 15.3.2023 and issued on 16.3.2023.
8. For one to be found guilty of contempt of a court order, there must be prove that there was a valid court order issued; that he order contained a penal notice; that the order was served upon the contemnor or that the contemnor had knowledge of the same and that the contemnor willfully disobeyed the same.
9. There is no contention that this court gave an order on 15.3.2023. The order was clear on what the contemnor was not to do. The order was issued on 16.3.2023 and contained a penal notice. The order was served upon the contemnor on 16.3.2023 and an affidavit of service was filed by a process server. The process server knew the contemnor as he had previously served him with court processes.
10. The Respondent has willfully and in flagrantly breached the court order by entering the house from which he was restrained. He is residing in the house and he does not deny this fact. In *Halbury's Laws of England* (Fourth Edition) volume 9 at page 37, it states as follows: -
 

“As a general rule, no order of court requiring a person to do or abstain from doing an act may be enforced unless a copy of the order has been served personally on the person required to do or abstain from doing the act in question.”
11. In Civil case No. 111 of 2016 *Cecil Miller v Jackson Njeru & another* (2017) Lady Justice Njuguna listed the elements of contempt as follows:-
 

“The elements of a civil contempt as espoused in a book titled ‘Contempt in Modern New Zealand, were set out as follows:

  - a. The terms of the order (or injunction or undertaking were clear and unambiguous and were binding on the defendant.
  - b. The defendant had knowledge of or proper notice of the terms of the order.
  - c. The defendant has acted in breach of the terms of the order and;
  - d. The defendant conduct was deliberate.”
12. The four elements which are required to be proved in contempt cases have been proved. The Respondent cannot claim that he was not served when there is an affidavit of service filed by a process server clearly stating how the process server served him. The Respondent seems to be saying that the order was not served within 3 days as required. Contrary to the Respondent’s contention, the affidavit



of service clearly shows that the order was issued on 16.3.2023 and was served on the same day. I therefore find that the contemnor is guilty of contempt and is accordingly convicted.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 8<sup>TH</sup> DAY OF MAY, 2024.**

**E. O. OBAGA**

**JUDGE**

In the virtual presence of;

Mr. Kipkoech for M/s Lelei for Plaintiff/Applicant.

Court Assistant –Laban

**E. O. OBAGA**

**JUDGE**

**8<sup>TH</sup> MAY, 2024**

