



**Mugambi v Agui (Environment & Land Case E007 of 2022)  
[2023] KEELC 20533 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20533 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT & LAND CASE E007 OF 2022  
MN MWANYALE, J  
OCTOBER 5, 2023**

**BETWEEN**

**NICHOLAS NABWAYA MUGAMBI ..... PLAINTIFF**

**AND**

**JOSEPH KIPKOECH AGUI ..... DEFENDANT**

**RULING**

1. Before Court for determination is the Notice of Motion Application dated 20<sup>th</sup> June 2023, which seeks orders that;
  - a) The Respondent Joseph Kipkoech A. Agui be committed to jail for contempt of Court for disobeying the e4xpress orders of this Court granted on 17<sup>th</sup> May 2022.
  - b) That the said Respondent be ordered or kept in prison for a term not exceeding 6 (six) months or for a term this Honourable Court may deem fit and just.
  - c) That the Respondent do pay costs of this application.
2. The application is grounded on grounds that Defendant has continued with the encroachment onto and trespassing onto the land, and forcefully ploughed interfering with, burning Applicant's crops plated thereon and doing all such acts which are prejudicial to the Plaintiff/Applicant interested on the suit parcel of land.
3. The application is further supported by the affidavit of Nicholas Nambaya Mugambi where upon it is deponed that there exist orders of the Honourable Court, which orders were issued when the Plaintiff/Applicant was in occupation of the suit parcel of land, which information led to the issuance of the Court Order.



4. That the Defendant/Respondent forcefully entered the suit land despite knowledge of the orders and not only injured the Applicant but burnt his crops, and annexures NB2 and 3 were photographs of Police Occurrence Book reports, burnt crops, as well as a discharge summary and assault report.
5. The Respondent was required to file a Replying Affidavit to the application and the ruling was initially reserved for 28/9/2023 but the Respondent only availed submissions on 25/9/2023 but did not file a Replying Affidavit hence the deferment of the Ruling to today.
6. In short, the application for contempt was not opposed by the Respondent as no Replying Affidavit was on record at least at the time of writing this Ruling. Although the application is not opposed, the same shall now be subjected to a merit review.
7. Although Respondent did not file a Replying Affidavit he nonetheless through his Advocate filed submissions.
8. In his submissions the Applicant has set out the statutory basis for punishing contempt of Court, and has cited Section 5 of the Judicature Act, Section 29 of the Environment and Land Court Act as well as Order 40 Rule 3 (i) of the Civil Procedures Rules.
9. The Applicant's Advocate in his submissions did not address the Court on the principles the Court ought to consider before returning a finding on contempt.
10. On his part the Respondent through his Advocate has cited the said principles but did address the Court as to whether the Applicant has satisfied the same, he submits that since ownership of the disputed suit parcel has not been decided, the Court cannot find the Respondent in contempt. He thus urges the Court to dismiss the application.
11. The General principles with regard to contempt of Court application are cited in the decision in the case of Kristen Carla Buirchell vs Burry Grant Burchell which decisions is cited in the case of Katsuri Limited vs Kapcischard Decour Shah 2016 eKLR.
12. The said principles are; -
  - 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.
13. The Court frames the sole issue for determination to be whether in light of the said principles, the Respondent can be said to have been in contempt of Court.
14. As observed earlier no replying affidavit has been filed, hence the application is unopposed and the depositions are uncontroverted. Indeed, an order injunctive in nature was issued initially on 2<sup>nd</sup> March 2022 and later confirmed on 17/5/2022 by consent of the parties; in terms of the temporary injunctive orders that had been issued on 2/5/2022.
15. The said order prohibited the Defendant/Respondent, by himself, agents, servants, employees or otherwise from trespassing, evicting the Plaintiff and his family, subdividing, selling, fencing, transferring, assigning or erecting structures thereof, pending hearing and determination of the suit.
16. Whether the above order was capable of being obeyed or disobeyed is answered in the affirmative as it was clear in its terms as it required the Respondent to refrain from the set-out activities on the suit parcel.



17. Was the Defendant/Respondent aware of the temporary prohibitive injunctive, the same is answered in the affirmative as the orders were confirmed by consent of the Defendant/Respondent Counsel on record.
18. The Applicant has exhibited before Court, burnt crops in annexure NMM3 as well as O.B. Reports and medical treatment notes all explained at paragraphs 5, 6 of the Supporting Affidavit.
19. The Court is convinced in absence of any contradictions, that indeed some actions that are contemptuous of the Courts order were meted on the Applicant by the Respondent.
20. Having not challenged the depositions made by the Applicant. The Court finds that the Applicant has discharged his burden of proof and accordingly finds the Respondent in contempt. The Respondent shall be presented to Court for mitigation and sentencing on 17<sup>th</sup> October 2023 after the cause list.

**RULING, DELIVERED AND DATED AT KAPSABET THIS 5<sup>TH</sup> DAY OF OCTOBER, 2023.**

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

**JUDGE**

