



**Lelei v Tarus (Environment and Land Case Civil Suit  
87 of 2019) [2022] KEELC 2683 (KLR) (7 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2683 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND CASE CIVIL SUIT 87 OF 2019**

**EO OBAGA, J**

**JULY 7, 2022**

**BETWEEN**

**FRANCIS KIPKOECH LELEI ..... PLAINTIFF**

**AND**

**STEPHEN KEINO TARUS ..... DEFENDANT**

**RULING**

1. This is a ruling in respect of a Notice of motion dated April 7, 2022 in which the Plaintiff/Applicant seeks to have the Defendant/Respondent cited for contempt. The Applicant contends that he filed a suit against the Respondent and also filed an application seeking injunctive orders.
2. The Respondent was duly served with the application for injunction but he did not attend court. The court on March 8, 2021 having been satisfied that the Respondent had been duly served proceeded to allow the application as prayed.
3. The Applicant proceeded to extract the order which was issued on March 10, 2021. This order was duly served upon the Respondent, the area Chief and the OCS Kondoo Police Station on March 30, 2021.
4. The Applicant contends that on 3<sup>rd</sup> march, 2022, the Respondent trespassed on his five acres out of LR. No. Lainguse/Kiptega/ OL'Leinguse /487 Kondoo Settlement Scheme (suit property) in contempt of the court order issued on 10<sup>th</sup> March, 2021. It is on this basis that he seeks to have the Respondent cited for contempt.
5. The Respondent who was duly served with the application neither entered appearance nor filed any grounds of opposition or replying affidavit. The hearing of the application therefore proceeded ex-parte.



6. I have carefully considered the Applicant's application. Though the application was not opposed, the court has to be satisfied that the Applicant has demonstrated that there was indeed contempt of the court order.
7. In the instant case, I notice from the pleadings herein that the Applicant and the Respondent are partners who own the suit property in the ratio of 5 to 2 acres. Other than the Applicant alleging that the Respondent trespassed on to his five acres on 3/3/2022, he does not state the nature of the trespass. The closest he comes to the issue of trespass is in paragraph 17 where he states that if the Respondent continues to harvest indigenous tress, he will be prejudiced. There is no evidence of any tree harvesting which has been tendered. The details of the alleged report which he made to Kondoo Police Station are not known.
8. There is no evidence that the Respondent went beyond the two acres to do anything on the Applicant's 5 acres as to amount to contempt of court order. I have looked at the application which resulted in the orders which are alleged to have been breached. In fact, the compliant in that application was failure by the Respondent to cooperate to have individual titles issues. there was absolutely nothing done by the Respondent to warrant issuance of injunctive orders. The alleged harvesting of indigenous trees was never raised in the application which resulted in issuance of the injunction. Even the injunctive orders which were given were never anchored on the Applicant's suit. The claim of the Applicant is on severing of the partnership and refund of what he paid the Settlement Fund Trustee on behalf of the Respondent.
9. Contempt of court is quasi criminal in nature. A person can lose his liberty. It is therefore incumbent for the Applicant to prove it to the required standards. I therefore find that the Applicant has failed to show that the Respondent is in contempt of the order issued on March 10, 2021. The Applicant's application is totally devoid of merit. The same is dismissed with no order as to costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 7TH DAY OF JULY, 2022**

**E. OBAGA**

**JUDGE**

In the virtual presence of;

Mr. Okungu for Mr. Angui Kitigin for Applicant.

Court Assistant -Albert

**E. OBAGA**

**JUDGE**

**7TH JULY, 2022**

