



Chemitei v Yano & 2 others; County Police Commander, Elgeyo Marakwet County (Affected Party) (Environment and Land Case 12 of 2020) [2025] KEHC 12957 (KLR) (18 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12957 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
ENVIRONMENT AND LAND CASE 12 OF 2020
CK YANO, J
SEPTEMBER 18, 2025**

BETWEEN

TRUPHENA J CHEMITEI PLAINTIFF

AND

PIUS KIPTUM YANO 1ST DEFENDANT

REUBEN KIPKEMOI KOGO 2ND DEFENDANT

JOSPHAT KIPROTICH KIKONO 3RD DEFENDANT

AND

COUNTY POLICE COMMANDER, ELGEYO MARAKWET COUNTY AFFECTED PARTY

RULING

1. This ruling is in respect of an application dated 1st April, 2025 by the Attorney General seeking the following orders:-
 1. That this Honorable Court be pleased to issue an order of stay of its order summoning the County Police Commander Elgeyo Marakwet summoning him to attend court and explain why orders issued to the court bailiff could not be executed;
 2. That the Honourable Court be pleased to review and or set aside its summons issued to the County Commander Elgeyo Marakwet;
 3. That the court be pleased to issue an order that the OCS Kapcherop be compelled to provide security to the courts bailiff to enable him effect the order for eviction and order that the



defendant voluntarily comply with the court order failure of which (sic) she shall be declared to be in contempt of court;

4. That the cost of this application be in the cause.
2. The application is based upon the various grounds set out on the face of the motion and supported by an affidavit sworn by Peter Maingi Mulinge, the County Police Commander, Elgeyo Marakwet. He deponed that the OCS, Kapcherop had informed him that he had made several attempts to enforce the court order, but was met with resistance from the Plaintiff's relatives, who were armed. That consequently, he was forced to retreat as the alternative would have been to use force, which would injure the parties, the police as well as innocent by-standers and lead to other constitutional issues. He added that the situation also requires a contingent of police officers, who at the moment are involved in a security operation in Kerio Valley to disarm and arrest bandits.
3. The County Commander explained that during one such attempt to enforce the order, a house built by the Defendants was set ablaze. He deponed that the Parties' advocates had agreed to meet at the office of the OCS together with the Court Bailiff to discuss the possibility of peaceful enforcement of the order, however, he was instead summoned to appear in court. He deponed that enforcement of court orders are not in his purview, but that of the OCS. He asked that the summons be lifted to allow discussions with the parties in the first instance so as to prevent loss of lives and property.
4. He also pointed out that the Plaintiff is in blatant disobedience of this court's orders, yet the Defendants have not filed any application for contempt against her. He urged that it would be best and easier to first have dialogue, or alternatively have the Plaintiff cited for contempt than to have the police providing security with the Plaintiff's armed goons looming around. He also pointed out that the court order issued to the court Bailiff was directed at the OCS Kapcherop and not him, and that as it is, he had attempted to enforce it.
5. The Defendants/Respondents opposed the application through a Replying Affidavit sworn by the 2nd Defendant, Reuben Kipkemoi Kogo on 9th April, 2025. He denied the allegations of insecurity, stating that he lives on the suit property with the 3rd Defendant. He faulted the police for not taking any action despite knowing that the alleged goons were the Plaintiff's relatives. He added that the OCS Kapcherop is under the County Commander's command, thus he cannot act without the County Commander's direction. He denied that the police had attempted to enforce the order or that any of their houses were set ablaze as alleged by the County Commander.
6. The 2nd Defendant accused the police of frustrating the efforts to have the eviction order complied with and set out instances of the alleged frustration. He deponed that the instant Application is yet another attempt by the AG to frustrate the eviction process and deny them the fruits of justice 2 years after judgment was delivered. He asserted that the Defendants are entitled to protection of their personal security and to their property. He further deponed that the work of the police is to provide security during evictions and not to discuss or have dialogue with the parties, especially noting that the court made its decision after hearing all the parties. He urged that it is in the interest of justice that the court direct the County Commander to appear before it as ordered.

Submissions:

7. When the matter came up on 1st April, 2025 the court directed the Parties to file skeleton submissions on the Application. The record shows that the Applicant filed his submissions dated 20th May, 2025 whereas the Defendants' submissions are dated 7th May, 2025.



Applicant's Submissions;

8. In their Submissions, the AG framed one issue for determination, that is; whether it is necessary to summon the County Police Commander. It was submitted that the Respondent based their argument on the letter dated 17th July, 2024 written by the County Commander, in which he expressed difficulty in enforcing the order due to insecurity and sought time until the insecurity was quelled. It was submitted that the letter was written in respect of the warrants dated 31st October, 2023 and that the said warrants had been disregarded and fresh warrants issued on 22nd October, 2024.
9. Counsel reiterated the contents of the supporting affidavit and submitted that the Summons to the County Commander were sought in bad faith. She explained that there was need to adopt a process that would not lead to loss of life and other constitutional issues such as the right to shelter, and to ensure compliance with Section 152F, hence the need for negotiations. Counsel submitted that if there was no security threat as urged by the Defendants, there would be no need for police involvement to provide security during the eviction process. She argued that the summons sought are only meant to embarrass and arm-twist the law enforcement officers to do the Defendants' bidding.
10. Counsel further submitted that enforcement of court orders is but one of the functions of the National Police Service. She argued that issuing summons to a senior police officer on the unsubstantiated complaint by a litigant to explain why a court order had not been enforced was setting a dangerous precedent. She asked the court to consider other factors including availability of other remedies. Counsel relied on *Halima Ali Sigara vs Ali Kalil & 2 Others* (2014 eKLR).

Respondents' Submissions;

11. On his part, Counsel for the Respondents submitted that Section 80 of the *Civil Procedure Act* gives the court power to review its orders, whereas Order 45 sets out the grounds for review. Counsel submitted that the Applicant has failed to point out any ground for review of the orders made on 5th March, 2025 summoning the County Commander. He relied on the case of *National Bank of Kenya vs Ndungu Njau* (1997 eKLR, to submit that the Applicant has not met the threshold for grant of order of review.
12. Counsel pointed out that there was already an order directing the OCS Kapcherop to provide security for the eviction exercise, but that he cannot act without the direction, co-operation and facilitation of the County Commander, Elgeyo Marakwet. That the County Police Commander who is being blamed for the non-compliance of the orders admitted that Kapcherop is under his command. That the prayer to affirm the OCS Kapcherop will be of no effect without the County Commander's support, therefore, reviewing the summons will gravely prejudice the Respondents. He relied on the case of *Halima Ali Sigara vs Ali Kalil & 2 Others* (Supra).
13. Counsel submitted that the Police are public servants falling under Articles 10 and 47 of *the Constitution* and are required by law to obey court orders, urging that obeying court orders is mandatory and not optional. Counsel argued that allowing the application will mean that the order of eviction will never be enforced. He submitted that the role of the Police is to provide security and not have dialogue on the court order, which is final and cannot be subject to discussion. Counsel argued that allowing this Application will actually set a bad precedent where a party ordered to vacate land can conspire with police and defeat a court decision. He submitted that the instant Motion is not merited, and ought to be dismissed with costs, and that the County Commander be directed to appear before the court to explain why the orders could not be executed.



Analysis and Determination:

14. I have considered the application herein, the response thereto and submissions by both counsel. In essence, the Applicant is seeking a review of the order of the court summoning the County Police Commander, Elgeyo Marakwet County, to appear in court and explain why its orders issued to the court Bailiff have not been enforced.
15. The power of review in this Court is anchored in the *Civil Procedure Act*, Cap. 21 of the Laws of Kenya and the Civil Procedure Rules, 2010. Section 80 of the *Civil Procedure Act* provides that:-
Any person who considers himself aggrieved—
 - (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.
16. Order 45 of the Civil Procedure Code sets out the parameters for an application for review as follows:
Rule 1(1) Any person considering himself aggrieved:-
 - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.
17. It then follows that Order 45 provides for three circumstances under which an order for review can be made. The applicant must demonstrate to the court that:-
 - i. There has been discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed.
 - ii. There is a mistake or error apparent on the face of the record.
 - iii. For any other sufficient reason.
18. From a reading of the Application, it is not clear which of the above mentioned grounds the Applicant's Motion for review and setting aside is anchored on. In the submissions however, Counsel argued that they had demonstrated that there was sufficient reason for grant of the orders sought.
19. I have perused the record of the court in this matter. On 28th January, 2025 the AG appeared before this court and stated that eviction orders had been issued against the plaintiffs and that the OCS was to assist with compliance, but that the same had not been done. Counsel sought more time and the court granted 21 days for the OCS to comply. The matter then came up on 5th March, 2025. Mr. Gikandi brought to the attention of this court the letter dated 17th July, 2024. In that letter, Mr. Mulinge, the



County Police Commander and affected party herein, sought clarification on the role of the police on the eviction process, and further indicated that the situation in the county was volatile.

20. The record further shows that Mr. Gikandi asked that the County Commander be summoned to appear in court and explain why the warrants cannot be executed. On the same day, Ms. Odeyo for the Attorney General submitted before this court that the police do not evict, and only provide security. Despite this, the court still issued summons to the County Police Commander, Elgeyo Marakwet County to attend court on 1st April, 2025 to explain why the orders issued to the Court Bailiff cannot be executed.
21. Come 1st April, 2025 however, the County Police Commander was not in court, and going by Ms. Cheruiyot, State Counsel's submissions, he was allegedly attending a meeting in Nairobi. Even though this allegation was reiterated in the Supporting Affidavit to the Motion, no proof that the Commander was indeed attending a meeting was tabled before this court.
22. Conveniently, on the same date, the AG had filed the instant Motion seeking review and setting aside of the summons to the said County Police Commander. In the Motion, the County Police Commander states that the enforcement of court orders is not within his purview but that of the OCS. However, at paragraph 13 of the Supporting Affidavit, Mr. Mulinge deponed in part:-

“ That my major role in the police service is supervision and command...”
23. Earlier at paragraph 5, he had deponed that the OCS Kapcherop Police Station is under his command. If his main role is supervision and command, and by his admission, the OCS Kapcherop Police Station is under his command and Mr. Mulinge cannot purport to take a back seat in the enforcement of the court order. He is the proper party to explain to this court why an officer under his command has refused and/or neglected to assist in the enforcement of a valid court order.
24. Indeed, even as he attempts to wash his hands off the order, I have seen the letter dated 17th July, 2024 signed by him and addressed to the DR of this court. He sought therein an interpretation of the order of the court, and specifically, their role in the eviction process.
25. The Police Commander is well aware of the existence of the orders of this court and of the fact that they are yet to be executed. He is also well aware of the role of the police in eviction processes. As a matter of fact, all the parties herein are quite clear on the role of the police in the eviction process that has been ordered by this court against the Plaintiff herein. This can only mean that the letter seeking clarification was not done in good faith, but was an attempt to either evade enforcement thereof or to avoid it all together.
26. The Applicant has cited the case of Halima Ali Sigara vs Ali Kalil & 2 others (2014) eKLR, on the role of police during the eviction process. I note the court in that case had this to say:-

- “ 8. A perusal of the court file do reveal that at no time did the applicant appoint a court bailiff or any auctioneers to execute the court's order and such officer upon being issued with the warrant to evict the respondents upon seeking security from the OCPD and the OCS Wajir was denied the same. The OCPD and the OCS Wajir were not the ones who were required to evict the respondents but were required to provide security personnel to court bailiff or auctioneers. There is no affidavit by either court bailiff or auctioneer averring that they had been issued with warrant to evict the respondents and that they sought security from the OCPD and the OCS Wajir and was refused the same. The OCPD and the OCS Wajir could not be expected to carry out the role



of the court bailiff or evict the respondents as that was not their role. The application as it stands is incompetent for want of warrant of eviction to court bailiff to carry out eviction. No eviction could be entertained without warrant of eviction having been applied for and obtained.”

27. The said authority is however distinguishable from the instant motion, because in that case no auctioneer or bailiff had been appointed. In the instant case however, a court bailiff has been appointed and warrants of eviction duly issued to the Bailiff.
28. The court in the Halima Ali Sigara Case (Supra), further held that:-
- “9. This court is however concerned with the OCPD and the OCS Wajir inactivity and failure to give the applicant support as evidenced by the various correspondences in the court file and the contents of the applicant’s affidavit. We need not overemphasize the need for police officers to obey court’s orders in administration of justice. That upon the court bailiff or auctioneers being appointed by the applicant and upon seeking security personnel from the OCPD and the OCS Wajir this court would expect co-operation from the OCPD and the OCS Wajir otherwise the officers concerned will be cited for contempt of court’s orders.”
29. Therefore, while the County Police Commander is concerned by the Defendants’ failure to cite the Plaintiff for contempt, he must remain aware that he himself also runs the risk of being cited for contempt for his inaction.
30. I agree with Counsel for the Respondents herein that prayer No. 3 of the Motion seeking an order directing the OCS Kapcherop Police Station to provide security is superfluous. This is because the orders sought to be enforced herein are already directed to the said officer, and he has failed to do so necessitating the summons to his supervisor/commandant to appear in court to explain his failure to comply with the order.
31. The only reason that the County Police Commander has given for failure to comply with the order is insecurity in his jurisdiction. I have seen no official report indicating that the area is so affected by clashes and banditry that the order herein cannot be enforced. That aside, I have read the proceedings and note that the Plaintiff also admitted to the fact that she lives on the suit property alongside 2nd and 3rd Defendants who are the Respondents in this Application. I am more inclined to believe the Respondents on the issue of security of the area where the suit property is located. I doubt they would deny that one of their houses was set ablaze if indeed they suffered such a loss and that is also more reason why the County Police Commander needs to appear before this court to explain the situation clearly to the court.
32. It has been alleged that the Police are intent on negotiations and/or dialogue to avoid possible injuries, loss of life and possible constitutional violations. But that is the very reason this court directed the Police to supervise the eviction process. Interestingly, it would seem that a national security organ, being the National Police Service, that can comfortably disarm and arrest bandits in Kerio Valley, would like this court to believe that it is unable to arrest hired goons. It would be remiss of me not to mention that no arrests have been made despite the fact that the Police in Elgeyo Marakwet had intelligence, from the National Intelligence Service (NIS) no less, on who the planners and perpetrators of this alleged intended violence are.



- 33. The concern of right to shelter cannot arise when the court has already determined that the land does not belong to the Plaintiff and ordered her to vacate the land. Therefore, although she is entitled to shelter, it cannot be at the expense of the Defendants' right to their own property.
- 34. As a result, I see no justifiable reason to vary, review or set aside the summons issued by this court. The summons to the County Police Commander, Elgeyo Marakwet County still stand, and the said Officer should appear in court on a date to be agreed in court, to explain why the warrants issued to the Court bailiff have not been executed.

Orders :-

- 35. Owing to the above, it is my considered view that the Applicant has not met the threshold of grant of order of review. Accordingly, the Application dated 1st April, 2025 lacks merit and is hereby dismissed.
- 36. Orders accordingly.

DATED , SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 18TH DAY OF SEPTEMBER , 2025 VIDE MICROSOFT TEAMS.

HON. C. K. YANO
ELC, JUDGE

In the presence of;

.....for the Applicant.
.....for the Defendants/Respondents.

Court Assistant - Laban.

