



**Tireito v Lagat & 2 others (Environment & Land Case 441 of 2012)  
[2025] KEELC 955 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 955 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 441 OF 2012  
EO OBAGA, J  
FEBRUARY 28, 2025**

**BETWEEN**

**JOSEPH TIREITO ..... PLAINTIFF**

**AND**

**JACOB KISUGUT ARAP LAGAT ..... 1<sup>ST</sup> DEFENDANT**

**ANNA NGENY ..... 2<sup>ND</sup> DEFENDANT**

**STEPHEN KIPYEGO LEL ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The Plaintiff/Applicant filed a Notice of Motion dated 15<sup>th</sup> May, 2024 in which he sought the following orders:
  1. Spent
  2. That the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents be committed to civil jail for continued disobedience of the judgment/decree and the court orders issued herein and be imprisoned for a period of not less than six months/and or be fined.
  3. That the Honourable court be pleased to issue an order that the officer commanding Kapsoya Police Station do provide security to the Plaintiff's the County Surveyor and the Land Registrar in implementing the decree of the court herein.
  4. That the County Surveyor do affix beacons on the boundary to the 2.5 acres of land to be excised from Eldoret Municipality/Block 25 (Luliet)/2 in the presence of the Officer Commanding Kapsoya Police Station and the Plaintiff/his agents and/or his servants.



5. That the Deputy Registrar of this Honourable court to sign any documents and/or requirements to effect the judgment of the court as the Respondent has opted to disobey the court.
6. That costs be awarded to the Plaintiff.

## **Background**

2. The Applicant had filed a suit on 3<sup>rd</sup> June, 1999 against Jacob Kipsugut Lagat in which he sought a permanent injunction against the Defendant restraining him and his servants from interfering with his undivided share in LR No. 779/359 measuring 26.5 acres. He also sought for Kshs.40,000 being the value of destroyed trees, damages for trespass, costs, interest and any further relief the Honourable court deemes fit to grant.
3. An amended plaint was filed on 9<sup>th</sup> February, 2001 introducing Anne Ngeny as the second Defendant. On 14<sup>th</sup> February, 2002, the Applicant filed a Chamber Summons dated 13<sup>th</sup> February, 2002 in which he sought for a temporary injunction restraining the Defendants and or their agents from subdividing LR. No. 779/359 until determination of the main suit. The advocate for the 2<sup>nd</sup> Defendant filed a preliminary objection on the ground that the application dated 13<sup>th</sup> February, 2002 contravened the provisions of Order L Rule 15(2) of the Civil Procedure Rules as well as the mandatory provisions of the Oaths and Statutory Declarations Act.
4. The Preliminary Objection was heard by Justice Omondi Tunya who delivered a ruling on 13<sup>th</sup> June, 2002 dismissing it. Immediately after delivery of the ruling, the advocate for the parties recorded a consent granting prayer 2 of the Chamber Summons dated 13<sup>th</sup> February, 2002 limited to the Plaintiff's portion of 26.5 acres.
5. The Applicant's case was fully heard and a judgment was delivered on 26<sup>th</sup> February, 2014 in favour of the Applicant. As the case was pending for hearing before the Court of Appeal, the 2<sup>nd</sup> Respondent's son sold a portion measuring 50x126 ft to the 3<sup>rd</sup> Respondent. The 2<sup>nd</sup> Respondent had preferred an appeal to the Court of Appeal against the judgment of 26<sup>th</sup> February, 2004. This appeal was dismissed on 9<sup>th</sup> July, 2021.

## **Applicant's contention**

6. The Applicant contends that a judgment in his favour was delivered on 26<sup>th</sup> February, 2014 giving him 26.5 acres. Out of this 26.5 acres, 2.5 acres fell on Eldoret Municipality Block 25 (Luliet) 2 which is occupied by the 2<sup>nd</sup> Respondent. The Applicant further contends that the Respondents have refused to give up 2.5 acres to the Applicant at the area identified by the court but are instead pushing him away from the area identified by the court.
7. The Applicant states that on 13<sup>th</sup> June, 2002 Justice Omondi Tunya recorded a consent that the Applicant do have possession of 26.5 acres in LR No. 779/359 now comprised in Eldoret Municipality Block 25 (Luliet)/1 measuring 24 acres and 2.5 acres comprised in Eldoret Municipality Block 25 (Luliet)/2.
8. When the 2<sup>nd</sup> Respondent filed an appeal to the Court of Appeal. Justice Munyao granted stay in which he stated that the Applicant was to have possession of 26.5 acres pending hearing and determination of the appeal.
9. The Applicant contends that the particulars of contempt are that the 2<sup>nd</sup> Respondent obtained title under Registered Land Act contrary to Justice Omondi Tunya's orders. The other act of contempt



complained of is that the 2<sup>nd</sup> Respondent farmed 2.5 acres forcefully contrary to the court orders. She was found guilty of contempt and fined Kshs.100,000/=. The other act of contempt is that the 2<sup>nd</sup> Respondent sold 50x126 ft to 3<sup>rd</sup> Respondent. She was found guilty of contempt and fined Kshs.200,000. The 3<sup>rd</sup> Respondent has refused to give vacant possession of the 50x126 ft portion he is occupying.

10. The Applicant states that a surveyor went to the land to execute the decree but the Respondents refused to give him 2.5 acres near the road where his land is but instead the Respondents want to give him land away from where his land is.
11. The Applicant argues that when his advocate wrote a letter to the 2<sup>nd</sup> Respondent's advocate, the 2<sup>nd</sup> Respondent blamed the 3<sup>rd</sup> Respondent but when the surveyor went to the ground on 20<sup>th</sup> June, 2022 the Respondent claimed that the land was hers and this shows that she is out to cause mayhem hence the need for police protection to allow surveyor to carve out 2.5 acres.

### **2<sup>nd</sup> Respondent's contention**

12. The 2<sup>nd</sup> Respondent opposed the Applicant's application through a replying affidavit sworn on 27<sup>th</sup> May, 2024. The Respondent contends that this application is brought in bad faith contrary to the facts on the ground and on the court record. The Respondent states that she is not in contempt of court order as the decree of the court has been implemented following survey and Applicant has already taken possession and planted crops on the portion.
13. The Respondent had filed an application seeking implementation of the decree. The Applicant replied to this application stating that it was not her business to implement the decree as the matter was already before the Land Registrar and County Surveyor for implementation. On 24<sup>th</sup> June, 2022 the Respondent's advocate received a letter dated 22<sup>nd</sup> June, 2022 from the advocates for the Applicant which was addressed to the County Surveyor. The letter suggested that the Applicant was dissatisfied with the survey which was carried out. The letter was followed by an application dated 27<sup>th</sup> June, 2022 seeking to cite her for contempt.
14. The Applicant's letter of 22<sup>nd</sup> June, 2022, his application dated 27<sup>th</sup> June, 2022 and the Respondent's application dated 13<sup>th</sup> May, 2022 prompted the court to visit the land on 22<sup>nd</sup> November, 2022. In the spirit of resolving the dispute, the court asked the County Surveyor to come up with options on how the 2.5 acres will be excised.
15. A report dated 19<sup>th</sup> September, 2022 (Actual date was 19<sup>th</sup> December, 2022) was prepared pursuant to the directions of the court on 22<sup>nd</sup> November, 2022. The court (Justice Onyango) was to have the two applications that is the one dated 13<sup>th</sup> May, 2022 and the one of 27<sup>th</sup> June, 2022 heard after receipt of the surveyor's report. The Applicant filed an application dated 6<sup>th</sup> February, 2023 seeking recusal of Justice Onyango and for stay of proceedings. The prayer for recusal was heard and disposed of. The Judge set down hearing for the remaining prayers in the Applicant's application of 6<sup>th</sup> February, 2023.
16. The Applicant filed application dated 19<sup>th</sup> June, 2023 seeking stay of execution pending hearing of an appeal against ruling declining recusal. This application was dismissed on 31<sup>st</sup> October, 2023. The Respondent contends that the Applicant has not prosecuted his application dated 27<sup>th</sup> June, 2022 which was seeking similar orders as the present one and that the present application is subjudice.
17. The Respondent contends that she has not done anything which is contemptuous of the court decree to call for her punishment. There is no report from either the County Land Registrar or County Surveyor indicating that she is resisting implementation of the decree. The Respondent further contends that



the issue pending is on implementation of the decree and not on interlocutory applications. She states that the purpose of Justice Omondi Tunya's order lapsed upon delivery of judgment.

### **3<sup>rd</sup> Respondent's contention**

18. The 3<sup>rd</sup> Respondent opposed the Applicant's application based on a replying affidavit sworn on 11<sup>th</sup> July, 2024. The Respondent contends that the Applicant's application is an abuse of the process of court. He states that he had started constructing on a portion measuring 50x100 ft which he purchased. The said portion is comprised in Eldoret Municipality Block 25 (Luliet)/2. He purchased the land without notice of any interest by the Applicant as a result of the judgment of Justice Munyao delivered on 26<sup>th</sup> February, 2014.
19. He further states that he had started constructing on the land but the construction was halted as a result of orders from this court. He goes on to state that the judgment of Justice Munyao to which he is bound was clear that the 2.5 acres were to be excised from where the Applicant's houses are. A report of the excision of the 2.5 acres has been prepared.
20. When Justice Onyango visited the suit property in company of all the parties and their advocates, the Judge ordered for a fresh survey which was to be undertaken in full compliance of the judgement of Justice Munyao. A report was prepared giving three possible options. The report was filed in court on 22<sup>nd</sup> November, 2022. All the three options take into account the houses which were pointed out in the judgment of Justice Munyao.
21. The Respondent states that the only thing remaining is for the surveyor to go to the ground and place beacons in compliance with any of the three options. There is therefore no need for another survey to be carried out. The Respondent contends that none of the three options by the surveyor touch on his land. He further states that the reference to the map which was before Justice Omondi Tunya was never produced before Justice Munyao and it related to an interlocutory application which was spent upon delivery of judgment by Justice Munyao.

### **Submissions of parties**

22. The Applicant filed his submissions dated 8<sup>th</sup> October, 2024. The 2<sup>nd</sup> Respondent filed submissions dated 9<sup>th</sup> October, 2024. The 3<sup>rd</sup> Respondent filed his submissions dated 4<sup>th</sup> November, 2024. Though the Applicant had been given liberty to file replying submissions upon being served with those of the 3<sup>rd</sup> Respondent, this liberty was subject to the Applicant making up his mind whether there was need to do so. I confirmed from the court's E-filing system that there were no further submissions filed.

### **Analysis and Determination**

23. I have carefully considered the Applicant's application, the opposition to the same by the Respondents, the submissions filed by the parties as well as the authorities cited. The issues which emerge for determination are firstly, whether the Respondents are guilty of contempt as alleged. Secondly, whether this court should order the County Surveyor to affix beacons around the excised 2.5 acres in accordance with the judgment of the court. Thirdly, which order should be made on costs.

### **Whether the Respondents are guilty of contempt as alleged**

24. The Applicant has alleged that the Respondents have disobeyed the court judgment delivered on 26<sup>th</sup> February, 2014. The Applicant points to the consent order which was recorded before Justice Omondi Tunya on 13<sup>th</sup> June, 2002. The Applicant is relying heavily on the consent order which was recorded before Justice Omondi Tunya and the rulings of Justice Ombwayo.



25. There is no contention that there were orders that the Applicant was to remain in possession of 26.5 acres. These 26.5 acres were to come from Eldoret Municipality Block 25 (Luliet)/1 measuring 24 acres. The deficit of 2.5 acres was to come from Eldoret Municipality Block 25 (Luliet)/2 which was to be excised. The court was clear in the judgment that the 2.5 acres were to include where there were houses.
26. Once judgment was delivered on 26<sup>th</sup> February, 2014, there was stay of execution which was granted to enable the 2<sup>nd</sup> Respondent finalize her appeal before the Court of Appeal. The court of Appeal delivered its judgement on 9<sup>th</sup> July, 2021. It is therefore clear that as at this time, the 2.5 acres had not been excised from Eldoret Municipality Block 25 (Luliet)/2.
27. The process of survey began on 14<sup>th</sup> June, 2022 when a surveyor went and excised 2.5 acres from the 2<sup>nd</sup> Respondent's land. A report was subsequently prepared and was dated 13<sup>th</sup> July, 2022. It is clear that the Applicant rejected this report. It is this rejection and the application by the 2<sup>nd</sup> Respondent which made Justice Onyango to order another report to be filed. The Judge in the presence of all the parties and their advocates were present when the court directed a fresh report be prepared. A report was prepared based on the directions of the Judge who was acting in her bid to have the decree implemented. This report prepared by the surveyor triggered a series of applications which culminated in the Judge recusing herself despite having initially declined to do so in her ruling.
28. From the time the report of 13<sup>th</sup> July, 2022 was filed, there is no evidence that the 2<sup>nd</sup> Respondent is in contempt of court for insisting on remaining on the area carved out for the Applicant. In fact it was deposed that the Applicant took possession of the portion excised and started farming on it. The three options given by the surveyor were carried out on directions of Justice Onyango and did not touch on the portion which the 3<sup>rd</sup> Respondent purchased. Since the third Respondent was stopped by Justice Ombwayo's ruling, he has never attempted to continue with the construction.
29. There was no order made by either Justice Ombwayo or the Court of Appeal ordering the 3<sup>rd</sup> Respondent out of the portion he had purchased. He cannot therefore be found guilty of contempt for disobeying a non-existent order seeking his vacation of the land.
30. The Applicant is relying on a map which was annexed to the application which resulted in the consent order recorded by Justice Omondi Tunya. This order was made by consent of the Advocates who wanted to have the order restricted to the 26.5 acres the Applicant was claiming. Prayer 2 of the chamber summons was expressed to cover the whole of the 106 acres yet the Applicant's interest was only 26.5 acres.
31. The consent order by Justice Omondi Tunya was not adopted by Justice Munyao. The orders arising from the consent were to last until hearing and determination of the suit. The orders ceased to have effect on 26<sup>th</sup> February, 2014 following delivery of judgement by Justice Munyao. The map which the Applicant seems to be relying on was not produced in evidence during the hearing before Justice Munyao.
32. From the submissions of the Applicant, he seems to argue that the injunction which was given transcended the judgment of Justice Munyao and that Justice Munyao must have had it in mind during his judgment. This is wrong. Justice Munyao was clear that the 2.5 acres were to cover the area where there were two houses. This has been done in more than two occasions but the Applicant seems not to agree with the reports. The Applicant claims that the area is far from the road.
33. The rulings of Justice Ombwayo which the Applicants seem to rely on were made before the 2.5 acres were excised as directed in the judgment. There was therefore no basis upon which the Applicant could



say with certainty that the area occupied by the 3<sup>rd</sup> Respondent was inclusive of the 2.5 acres which was to be excised from the 2<sup>nd</sup> Respondent's land.

34. There is no way the 2<sup>nd</sup> Respondent could be accused of refusing to give 2.5 acres to the Applicant as the said 2.5 acres had not been identified. The only condition which was placed on the way of the Land Registrar and Surveyor was that in their exercise of excising 2.5 acres from the 2<sup>nd</sup> Respondent's land, they were to ensure that the two houses were included in the 2.5 acres due to the Applicant.
35. In *Nderitu -vs-Attorney General & 12 others (Environment & Land Petition 2 of 2023) (2023) KEELC 22123 (KLR) (7December, 2023) (Ruling)* it was held as follows:

“The court shall deal with the 4<sup>th</sup> Respondent first. The court finds no evidence on record to demonstrate that he willfully disobeyed or violated the terms of the decree dated 19<sup>th</sup> February, 2015. As indicated in the ruling dated 23<sup>rd</sup> March, 2023 on the Petitioner's earlier application for contempt of court dated 30<sup>th</sup> September, 2020, the first actors were to be the Land Registrar and the District Surveyor. There is no way the rest of the Respondents would be expected to comply with the terms of the decree in the absence of determination of the boundaries of the suit property and the placement of beacons.”

**Whether the court should order the County Surveyor to affix beacons around the excised 2.5 acres afresh in accordance with the judgment of the court**

36. The 3<sup>rd</sup> Respondent purchased his portion out of LR No. Eldoret Municipality Block 25 (Luliet)/2 on 14<sup>th</sup> October, 2014. There was no order directing that the entire parcel had been covered by the stay and the orders which granted possession to the Applicant. The Applicant's interest was only on 2.5 acres which were subject to excision from the larger portion. The 3<sup>rd</sup> Respondent cannot therefore be said to have purchased part of the 2.5 acres which had been decreed in favour of the Applicant but was yet to be excised.
37. The 3<sup>rd</sup> Respondent had purchased the land from the son of the 2<sup>nd</sup> Respondent who had been shown the said portion which was to be his. The 2<sup>nd</sup> Respondent did not complain about what her son had done. The 3<sup>rd</sup> Respondent stated that he had begun construction on the portion purchased which construction was stopped pursuant to the ruling of 8<sup>th</sup> May, 2018.
38. The Applicant is seeking an order of this court that the County Surveyor does the beaconing in accordance with the judgment. It is important to note that the report 13<sup>th</sup> July, 2022 was done in execution of the judgment. The excision of the 2.5 acres took into account the houses as per the judgment. The Applicant rejected this report. The 2<sup>nd</sup> Respondent filed an application seeking to implement the decree. The court in its exercise of settling all matters arising in execution of the decree made orders in execution of the decree. These orders and directions were given pursuant to Section 34 (1) of the Civil Procedure Rules which provides as follows:  
  
All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.
39. Another survey was carried out giving three options. This is when the Applicant began resisting the directions of the court by asking Justice Onyango to recuse herself from the case including Petitioning the Judicial Service Commission. It is clear that the Applicant is intent on carrying out a fresh survey to which he will agree with. This is clear from his position that he is being pushed away from the road. The 2<sup>nd</sup> Respondent had not shown any resistance to the survey exercise. When the Land Registrar



and Surveyor summoned her, she attended and the survey was done without any resistance. One then wonders where all of a sudden the 2<sup>nd</sup> Respondent is being called as hellbent on causing mayhem as to call for police assistance.

40. This court will not order another survey to be carried out when it is clear that the two survey reports on record had been done in strict compliance of the court judgment.

### **Disposition**

41. This matter has been pending execution for close to 7 years since the Court of Appeal dismissed the 2<sup>nd</sup> Respondent's appeal. The Applicant appears to have rejected the survey report of 13<sup>th</sup> July, 2022. Lady Justice Onyango in the presence of the parties and their counsel went to the ground in execution of the decree. The Judge ordered that the surveyor comes out with three options which will comply with the judgment. Before its implementation, the Applicant started the process of scuttling the implementation. This is how the file landed before me after the Judge's recusal.
42. Litigation has to come to an end. I find that the Applicant has partially succeeded in his application to the extent that the County Surveyor do proceed to the ground and place beacons on the excised 2.5 acres. The beacons should be in accordance to any of the three options which were identified by the surveyor in the survey report of 19<sup>th</sup> December, 2022 which was erroneously dated 19<sup>th</sup> July, 2022 pursuant to the directions of Lady Justice Onyango. Save for the partial success of the Applicant's application, the rest of the prayers in the Notice of Motion dated 15<sup>th</sup> May, 2024 are declined. The costs of the surveyor shall be shared equally. Each party shall bear their own costs on this application.

It is so ordered.

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**HON. E. O. OBAGA**

**JUDGE**

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2025.**

In the presence of:

Dr. Chebii for Applicant.

Ms. Chesoo for Interested Party.

Ms. Odwa for 2<sup>nd</sup> Respondent.

Court assistant Steve Musyoki.

