



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT

AT KITALE

ELC CASE NO. 5 OF 2006

JACOB LEMAKWANG & ANOTHER.....PLAINTIFF

=VERSUS=

JACKSON CHAMER.....DEFENDANTS/APPLICANT

RULING

BACKGROUND.

1. The Plaintiffs *Jacob Lemakwang* and *Cheputula Tongelach* owned plot No. 51 and 54 at Kapsait in West Pokot County. The defendant owned plot No. 52 which borders the plots owned by the plaintiffs. There was a dispute regarding the boundaries of the plots. The Plaintiffs were alleging that the defendant had encroached on their land.
2. The advocates for the parties agreed to send a surveyor to the ground to ascertain the boundaries and occupation on the ground. The surveyor went to the ground and filed his report. The report was adopted in court effectively settling the dispute.
3. It was found that some parties were occupying plots belonging to the others. It was mutually agreed that they move out. Some families moved out but others did not move out. The second defendant *Cheputula Tongelach* was found to be occupying the defendant's land. She refused to move. The defendant was forced to apply for an eviction order.
4. The second defendant pleaded for one month to move out. After the one month lapsed, she did not move out. She was forcefully evicted.

APPLICANT'S APPLICATION.

5. The defendant/applicant now contends that after the eviction pursuant to a court order, the second Defendant /Respondent has gone back and constructed new structures on the applicant's property. That the Respondent was personally served with the eviction order which was implemented by her structures being demolished but she has since gone back and put up new structures in defiance of the court order.

RESPONDENT'S CONTENTION

6. The Respondent contends that she is not in contempt of any court order. That she was never evicted and that she was allowed to stay on the applicant's property because of her advanced age.

ANALYSIS

7. During the surveyor's visit to the ground, he found that the Respondent was occupying **LR No. West Pokot/Kapsait/694** belonging to the applicant. The applicant moved to Court and obtained an eviction order. The Respondent was finally evicted in accordance with the order of the court.

8. In an application for contempt, the applicant is expected to show that there was a valid court order issued, that the said order was duly served, that the order contained a Penal Clause and finally that there was disobedience of that order by the contemnor.

9. In the instant case, there was an eviction order given on 22nd October 2014 requiring the eviction of the contemnor from **LR No. West Pokot/Kapsait/694** . The Order had a Penal Clause and the same was served upon the contemnor by a process server called **Archibald Wekesa Nyukuri**. The Court Order was issued on 5th November 2014 and served upon the contemnor on 7th November 2014.

10. The Officer Commanding Police Station Kapenguria (OCS) was directed to assist in the eviction process. The OCS wrote a letter to the Deputy Registrar of the Court on 2nd July 2015, detailing how they executed the order of eviction. All this has been annexed to the supporting affidavit of the applicant. The eviction was conducted on 19th June 2015.

11. The applicant has annexed photographs of newly constructed houses on the disputed property from where the contemnor had been evicted. The photograph shows wanton destruction of indigenous trees and a newly constructed house and another in the process of construction.

12. The Respondent's contention that she was not evicted has no basis. She claims that the houses exhibited in the applicant's affidavit are not on the disputed parcel. I find this to be false. She concedes that the police officers went there to evict her but she pleaded for time to move out. This is confirmed by the OCS' letter which clearly says that she pleaded for one month. After one month, she was evicted. She cannot therefore claim that she was never evicted.

13. The photographs exhibited by the applicant clearly paint a picture of a person out to hang on to a property which does not belong to her. This is clear from the photographs of the many trees which have been felled down.

CONCLUSION.

14. I find that the applicant has proved that the contemnor is in contempt of Court. The contemnor should be arrested under warrant and brought to court to be punished in accordance with the law. The contemnor shall bear the costs of this application.

It is so ordered.

Signed at **Nairobi**

E.O .OBAGA

JUDGE

Dated, and delivered at **Kitale** on this **8th** day of **March 2017**.

F.M.NJOROGE

JUDGE

In the absence of parties who had been notified of today's date in good time.

Court Assistant : Isabella

F.M.NJOROGÉ

JUDGE