



**Mugambi v Agui (Environment & Land Case E007 of 2022)
[2024] KEELC 13410 (KLR) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13410 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE E007 OF 2022
MN MWANYALE, J
NOVEMBER 21, 2024**

BETWEEN

NICHOLAS NABWAYA MUGAMBI PLAINTIFF

AND

JOSEPH KIPKOECH AGUI DEFENDANT

RULING

1. On 4th November, 2024, the Court directed the hearing interparties of the application dated 17/9/2024 on 20/11/2024 and granted the Respondents time to file their response to the said application.
2. On 20/11/2024, when the matter came up for interparty hearing the Respondent had not filed a response and neither he nor his Counsel were present in Court.
3. Upon the Court being satisfied as to service of the application on the Respondent himself this being a contempt of Court application, as well as the Respondent's Counsel on record via the filed affidavits of service. The Court deemed the application as unopposed and nonetheless allowed the Applicant's Counsel to argue the same on its merits.
4. It was the Applicant's submission that the Respondent is in contempt of the Court orders issued on 17/5/2022 which required maintenance of status quo, the status being that the Applicant was in possession of the suit parcel. It was the Applicant's submission that the current events leading to this application were not in isolation since the Court had in 2023 already dealt with the issue of contempt and fined the Respondent but despite that the Respondent encroached the parcel in April 2024 as was evidenced by two letters from the OCS Metetei Police Station and the Assistant County Commissioner (ACC) Tinderet Sub County exhibited as annexures 2 and 3 before Court.
5. The Applicant thus prayed that the Court allows the application and mete out an appropriate punishment.



6. Having analyzed and considered the application, the affidavit as well as the submissions, the Court frames only one issue for determination.
 1. Whether or not the application is merited?
7. As observed elsewhere in this Ruling this application is unopposed however the duty of an Applicant to prove merits on an application remains the same. This is in line with the parity of reasoning with the decision in the case of *Karugi and others v Kabiya & 3 others* 1983, eKLR where the Court held *inter alia*;

“the burden on a Plaintiff to prove his case remains the same throughout the case even though the burden may become easier to discharge where the matter is not validly defended. The burden of proof is not way lessened because this is heard by way of formal proof.”
8. With regard to the issue of service of the Court Orders on the Respondent this being a contempt of Court application. The Applicant submitted that the Respondent was aware of the existence of the Court orders issues on 17/5/2022 as he was previously in breach of the said orders which led to him being found culpable and he was accordingly fined. The Court accepts this submission as indeed from the Court record the Respondent was previously fined for being similarly in contempt of Court of the same orders that he is accused of now being in breach and he must be deemed to have been aware of the orders and deliberately breached the same.
9. By way of Annexure 2 and 3 exhibited before Court being letter from Public Officials, confirming that the Respondents encroached the suit property, I am convinced that the Applicant has proved his case and the application is merited.
10. Accordingly, the Court finds the Respondent to be once again in contempt of its orders issued on 17/5/2022 and the Respondent shall appear for mitigation before sentencing. Mitigation and sentencing on 9/12/2024.

RULING, DELIVERED AND DATED AT KAPSABET THIS 21ST DAY OF NOVEMBER 2024.

HON. M. N. MWANYALE,

JUDGE

In the presence of;

Ms. Chelimo for the Plaintiff

Mr. Choge for the Defendant

