



**Kiptanui v Kotut (Environment & Land Case 28 of 2019)
[2023] KEELC 191 (KLR) (26 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 191 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 28 OF 2019**

**EO OBAGA, J
JANUARY 26, 2023**

BETWEEN

SAMWEL KIPLAGAT KIPTANUI PLAINTIFF

AND

JANE JEPKEMBOI KOTUT DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated April 7, 2022 in which the Plaintiff/Applicant seeks the following reliefs:-
 1. Spent
 2. That this Honourable court be pleased to order the detention of the Defendant/Respondent Jane Jepkemboi Kotut, her servants and/or agents and her son one Kelvin Kibiwott Kotut herein in prison for a term not exceeding 2 years for disobeying and breaching the Court order issued on June 17, 2020.
 3. That costs of this application be provided for.
2. The Applicant states that on May 14, 2020, the court gave an order restraining the Defendant/Respondent or her agents and or servants from interfering with 3 acres comprised in LR No Uasin Gishu/Kipkabus/912. An order was extracted and was given on June 17, 2022. However, on February 18, 2022, the Respondent and her son Kelvin forcefully ploughed the land and threatened the Applicant. This was despite the Applicant and her son being aware of the court order.
3. The Applicant states that if the Respondent and her son are not punished, they will continue to breach the court order to the loss of the Applicant. It is on this basis that the Applicant wants to have the Respondent and her son punished for contempt.



4. The Respondent opposed the Applicant's application through a replying affidavit sworn on October 31, 2022. The Respondent contends that the Applicant's application is incompetent and an abuse of the process of the court. The Respondent states that the orders which were issued on May 14, 2020 did not apply to the four (4) acres which have always belonged to her.
5. The Respondent further states that the provisions which have been cited deal with change of Advocates in a suit and security for costs and therefore renders the application incompetent.
6. During the hearing, the application was argued orally. Dr Chebii for the Applicant argued that service of the extracted order was not disputed. Mr Mutwiri for Respondent argued that there is no contempt of court which has been established. Mr Mutwiri further argued that no evidence of the alleged contempt had been shown.
7. I have carefully considered the Applicant's application together with the opposition thereto by the Respondent. I have also considered the oral submissions. The only issue for determination is whether the Applicant has proved that there was contempt committed by the Applicant and her son.
8. For one to be found guilty of contempt, the following must be proved. First, that there was a valid court order given and issued. Second, that the alleged contemnor was served with the said order or that the contemnor was aware of the same. Third, that the contemnor deliberately disobeyed the court order.
9. In the instant case, there is no doubt that there was a court order given on May 14, 2020 and issued on June 17, 2020. There is no evidence whether the said order was served upon the contemnor or that the contemnor was aware about it. There was no affidavit of service filed. I have gone through the court record and there is no indication as to whether the Advocates for the parties were present either physically or virtually. There is also no evidence whether the ruling and or extracted order was electronically transmitted to the Advocates.
10. The Applicant claims that the order which was violated is the one which was issued on June 17, 2020 yet he states that the ploughing was done on February 18, 2022 even before the said order was given or issued. A party cannot be guilty of breach of an order which was not in existence when the alleged contempt occurred. I find that the present application is an abuse of the process of the court and a waste of judicial time as rightly submitted by Mr Mutwiri during the oral hearing. I find no merit in this application which is dismissed with costs to the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 26TH DAY OF JANUARY, 2023.

E O OBAGA

JUDGE

In the virtual presence of;

Mr Muturi and Mr Ondieki for Defendant /Respondent.

Ms Bosibori for Dr Chebii for Applicant.

Court Assistant –Akidor

E O OBAGA

JUDGE

26TH JANUARY, 2023

