

KENYA / JUDGMENT

Omwenga v Chebet

[2026] KEELC 5454 (KLR)

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COURT

Environment and Land Court

CASE / FILE NUMBER

Environment and Land Case 256 of 2013

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REPUBLIC OF KENYA IN THE ENVIRONMENT AND LAND COURT AT ELDORET ELC CASE NO.
256 OF 2013 EVANS MAIRURA OMWENGA.....PLAINTIFFS/APPLICANT VERSUS DANIEL C.
CHEBET DEFENDANT/RESPONDENT

RULING:

1. The Applicant herein filed an application vide the Notice of Motion dated 9th April, 2026, against the Respondent seeking the following orders: - i. Spent. ii. That the honourable court do grant leave to the Applicant to prosecute the respondent together with his servants/agents for being in contempt of court

orders.

iii. That summons do issue to the defendant/respondent to personally appear in court on a day appointed by the court to show cause why he should not be held in contempt of court. iv. This honourable court do find the respondent together with his agents namely Daniel C. Chebet, in contempt of the court judgment dated 4th November, 2014 and Decree issued on 4th July, 2019 and commit them to civil jail for a period of six months and/or until such a time that the respondent shall comply ELC Case No. 256 Of 2013 Ruling Page 1 with this court's directive as determined by this honourable court or until the contempt is purged. v. Costs of this application be met by the respondent. 2. The present application is premised on the 9 grounds on the face thereof and on the plaintiff/Applicant's Supporting Affidavit sworn on even date. 3. The Applicant stated that he is the registered and legal owner of the suit property, L.R. No. ELDORET MUNICIPALITY/BLOCK 14/783, measuring approx. 0.5 Acres. He produced copies of the certificate of lease, green card and the certificate of official search in support of the ownership claims. 4. It was his claim that the dispute between the parties herein was heard and finally determined on merit vide a judgment delivered on 04.11.2014 in his favour, declaring the applicant as the right proprietor of the suit property and issuing an order of permanent injunction against the respondent. 5. That aggrieved by the said judgment, the defendant/respondent appealed against the judgment to the Court of Appeal vide a Notice of Appeal dated

12.11.2014. However, the respondent failed to prosecute the said appeal and the notice of appeal was subsequently withdrawn. ELC Case No. 256 Of 2013 Ruling Page 2 6. That upon the said withdrawal the defendant filed an application seeking leave to file an appeal out of time, which application was also dismissed. Consequently, a decree was issued on 04.07.2019. The respondent was restrained from entering, being upon, grazing, keeping livestock, cultivating, developing, interfering with any structures or in any way dealing with the suit property. 7. The Applicant further contends that on 12.03.2026, he made an application to the County Government to be allowed to construct a temporary housing structure and a pit latrine, which application was allowed. That however, sometimes on 24.03.2026, while his workers were beginning to work on the pit latrine, the respondent approached them and chased them away. 8. It is his claim that the defendant/respondent's actions of trespass into the suit property amounts to contempt of court orders, openly disobeying the orders of this court despite having knowledge of the existence of the said orders. 9. He maintained that the said actions by the respondent are demeaning to the authority and honour of the court and it is therefore necessary to commence contempt of court proceedings. He thus urged the court to allow the present application and grant the orders sought. ELC Case No. 256 Of 2013 Ruling Page 3 10. The present application was opposed. The Respondent filed a Replying Affidavit dated and sworn on 11th May, 2026, in response to the application. He dismissed the application as being frivolous, vexatious, ill-motivated and an abuse of the court process. 11. It was his claim that he purchased the said suit property L.R. No. Eldoret Municipality/Block 14/783, from the original owner, Paul Kibor Kemboi, who is since deceased, on 22.07.2004 for Kshs. 380,000/=. That pursuant to the said purchase, he took vacant possession and has remained and enjoyed possession since 2004 to date. 12. He confirmed being aware of the judgment of the court which was delivered on 05.11.2014 which was referred to by the applicant in his supporting affidavit. It was however his contention that by the time the instant suit was being filed, he had already initiated criminal investigations over an alleged forgery involving the acquisition of the Certificate of Lease over the suit land No. Block 14/783. 13. It was further deponed that upon conclusion of the said criminal investigations, the plaintiff herein was charged in the proceedings ELDORET CMCR. CASE No. 6586 OF 2014 – REPUBLIC VS EVANS MAIRURA OMWENGA for the offence of forgery of a document of title contrary to section 350(1) of ELC Case No. 256 Of 2013 Ruling Page 4 the Penal Code and conspiracy to defraud contrary to section 317 of the Penal Code. That applicant was subsequently convicted for the offence of forgery of a document of title and fined Kshs. 30,000/= or in default, to serve 6 months imprisonment. 14. That aggrieved by the said decision, the applicant herein appealed against the said conviction vide HCCRA No. E108 of

2023. The appeal was heard and finally determined vide the judgment delivered on 12.03.2026 whose effect was to set aside the judgment of the trial court and order a retrial in the subordinate court. 15. It is the respondent's contention that he cannot be held to be in contempt of any court order since he has been on the suit property since 2004 whereas the applicant has never taken possession of the suit land since the Certificate of Lease was issued in his favour in 1996 and/or in 2014 when the judgment herein was issued. 16. He further argued that the authenticity of the applicant's title document is in dispute and the

same is pending in the criminal proceedings before the subordinate court as directed by the High Court in its judgment delivered in HCCR Case No. 108 of 2023 on 12.03.2026. ELC Case No. 256 Of 2013 Ruling Page 5 17. In conclusion, he urged the court to dismiss the present application with costs. 18. The application was canvassed by way of written submissions. The applicant filed his submissions dated 06.07.2026 together with authorities while the respondent filed his submissions dated 02.07.2026 together with authorities, which I have read and considered.

ANALYSIS AND DETERMINATION:

19. I have carefully looked at the facts and grounds in the application and the affidavit in support thereto, the replying affidavit and the annexure therein as well as the rival submissions in totality. Consequently, it is my considered opinion that the issues arising for determination are as follows: - i. Whether the applicant has proved the essential elements of contempt to the required standard. ii. Whether the respondent's action amounts to contempt of court iii. Whether the present application is merited iv. Who shall bear the costs of the present application. 20. Having identified the above issues for determination, I will now proceed to discuss the same as hereunder. ELC Case No. 256 Of 2013 Ruling Page 6 Whether the applicant has proved the essential elements of contempt to the required standard; 21. The first issue herein, seeks to determine whether the applicant has sufficiently demonstrated and proved the essential elements of contempt to the required standard. 22. Contempt is defined in the Black's Law Dictionary (Ninth Edition) as follows; "Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment." 23. In Econet Wireless Kenya Ltd vs Minister for Information & Communication of Kenya & Another , Ibrahim J (as he then was) in addressing the issue on contempt made the following sentiments: - "It is essential for the maintenance of the Rule of Law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against or in respect of whom, an order is made by Court of competent jurisdiction, to obey it unless and until that order is discharged..." ELC Case No. 256 Of 2013 Ruling Page 7 24. It is not in dispute that judgment in the present dispute was rendered on merit on 04.11.2014 and the Decree thereto subsequently issued on 04.07.2019. The effect of the judgment was to allow the plaintiff's claim by making a declaration that the plaintiff is the rightful and lawful registered proprietor of the suit parcel and an order of permanent injunction issued against the respondent and his agents, servants and /or employees. 25. It is also not in dispute that the respondent, being aggrieved by the said judgment, filed a Notice of Appeal to the Court of Appeal, signifying his intentions of appealing against the judgment of the court. The said notice of appeal was however withdrawn and the subsequent application to file an appeal out of time was equally dismissed. There is therefore no pending appeal lodged against the judgment delivered on 04.11.2014 or any valid order

issued by a court of competent jurisdiction whose effect is to discharge, set aside and/or vary the orders issued on 04.11.2014. 26. Having settled the meaning and scope of contempt, the question that follows is on the burden of proof in contempt matters. It is trite law that the standard of proof in contempt matters is higher than that of ordinary civil matters. 27. The Court of Appeal in the case of *Mutitika v Baharini Farm Limited* [1985] KLR 229, 234 held that: - ELC Case No. 256 Of 2013 Ruling Page 8 “In our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...The standard of proof beyond reasonable doubt ought to be left where it belongs, ‘to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature. The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail must be exercised with utmost care and exercised only as a last resort. It is utmost importance, therefore, for the respondents to establish that the alleged contemnor’s conduct was deliberate in the sense that he or she wilfully acted in a manner that flouted the court order.” 28. Having established that the standard of proof required in contempt matter is higher than the threshold required in ordinary civil matter, this court therefore seeks to determine whether the applicant has sufficiently proved these elements to the required standard. ELC Case No. 256 Of 2013 Ruling Page 9 29. The elements to be proved in contempt proceedings were discussed in *Samuel M. N. Mweru & Others v National Land Commission & 2 Others* [2020] eKLR where the court held as follows:- “40.It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove; i.the terms of the order, ii.Knowledge of these terms by the respondent, iii.Failure by the respondent to comply with the terms of the order. Upon proof of these requirements the presence of wilfulness and bad faith on the part of the respondent would normally be inferred, but the respondent could rebut this inference by contrary proof on a balance of probabilities. 30. I will now proceed to discuss each of the elements discussed above in determining whether the same have been sufficiently proved by the applicant. The Terms of the Judgment dated 05.11.2014 and Decree thereto; 31. This court has taken the liberty to carefully look at the judgment of this court (differently constituted) issued on 05.11.2014 by Hon. Justice Munyao Sila (as he then was) and I wish to reproduce the final orders issued therein for avoidance of doubt as follows: - ELC Case No. 256 Of 2013 Ruling Page 10

- a) As against the defendant, the plaintiff is declared to be the rightful proprietor of the land parcel Eldoret Municipality/ Block 14/783.
- b) A permanent injunction is hereby issued stopping the defendant and /or his servants / agents from entering, being upon, grazing, keeping livestock, cultivating, developing, interfering with any structures or in any other way dealing with or interfering with the land parcel Eldoret Municipality/ Block 14/783.

- c) An award of general damages in the sum of Kshs. 200,000/= is made in favour of the plaintiff against the defendant.
- d) No award is made as damages for mesne profits.
- e) Costs of both main suit and counter-claim to the plaintiff. 32. As earlier stated, it is common ground that the judgment and the terms thereto as outlined above have never been set aside, varied, reviewed and/or discharged and the same therefore remain valid court orders. 33. From the terms therein, it is clear that the respondent either by himself or through his servants or agents, was restrained from entering, being upon, grazing, keeping livestock, cultivating, developing, interfering with any structures or in ELC Case No. 256 Of 2013 Ruling Page 11 any way dealing and/or interfering with the suit land herein. Further, the plaintiff/applicant was declared as the rightful proprietor of the suit land. 34. In essence therefore, the respondent was barred from continuing his possession by being upon the suit land or from entering the suit land. However, it is his own admission that despite the clear and unequivocal terms of the judgment of the court, he has continued with his possession and use of the suit land to date, deliberately, willfully and in blatant disregard of valid orders of the court. Knowledge of these terms by the Respondent; 35. The second element to be proved is whether the respondent was aware and/or had knowledge of the terms of the Judgment delivered on 04.11.2014 and the resultant Decree. 36. It is the Applicant's claim that the respondent was fully aware of the terms of the judgment of this court. That the respondent fully participated in the proceedings which culminated in the judgment on 04.11.2014. He further argues that it is with the full knowledge of the judgment that the respondent went ahead and filed a Notice of Appeal to the Court of Appeal, signifying his intention to appeal against the said judgment as well as the subsequent application to appeal out of time which was equally dismissed. ELC Case No. 256 Of 2013 Ruling Page 12 37. This fact was further buttressed by the respondent in his replying affidavit herein, at paragraph 6, where the respondent has confirmed that he was aware of the judgment of this court. 38. Moreover, from a cursory look at the judgment dated 05.11.2014 annexed and marked as "EMO 2", it is evident that the same was delivered in the presence of the defendant's counsel, Mr. J.K Kiplagat. 39. It is therefore my considered opinion that the respondent had full knowledge of the judgment herein and the terms thereto, including the order of permanent injunction which barred him from entering, being upon, grazing, keeping livestock, cultivating, developing, interfering with any structures or in any way dealing and/or interfering with the suit land herein. Failure by the Respondent to comply with the terms of the order; 40. The third element is whether the respondent, willfully and deliberately failed, ignored and refused to comply with the terms of the judgment and decree. 41. I have carefully considered the facts and grounds outlined in the Supporting Affidavit as well as the annexures thereto ELC Case No. 256 Of 2013 Ruling Page 13 and the respondent's response thereto, particularly on his insistence that he has been and remained in possession of the suit property to date and ownership claims and in my view his actions amount to wilful defiance of the court orders, which adjudged the applicant as the legal and registered owner of the suit property. 42. Further, I do note that the respondent has placed reliance on the

criminal proceedings, touching on an alleged forgery of a title documents. To this end, I wish to state that the said criminal case in the subordinate court is still pending for retrial and determination of the charges therein. Moreover, it is imperative to point out that the subordinate court exercising its criminal jurisdiction, is not vested with the requisite jurisdiction to determine matters touching on the ownership of land or to sit as an appellate court in setting aside, reviewing and or varying the judgment of this court issued on 04.11.2014. 43. Save for the pending criminal trial proceedings, the respondent has not given any sufficient reason and justification for his continued possession, occupation and use of the suit property as seen from the annexures produced by the applicant. 44. It is therefore my considered view that the applicant has satisfactorily discharged the burden of proof and has proved ELC Case No. 256 Of 2013 Ruling Page 14 all the essential elements of contempt against the respondent to the required threshold. Whether the respondent's actions amount to contempt of court; 45. The second issue for determination is whether the respondent's actions amount to contempt of court. 46. In Oilfield Movers Ltd – vs – Zahara Oil & Gas Limited

[2020] eKLR the court stated – “It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or motive of the existence of the order of the court forbidding it. The threshold is quite high as it involves possible deprivation of a person's liberty.....” 47. In view of the findings in issue no. (i) above, it is my considered opinion that the acts by the defendant/respondent amounts to contempt. Whether the Application is merited; 48. In view of the findings above, it is my considered view that the present application is merited and the applicant is entitled to the grant of reliefs as sought. ELC Case No. 256 Of 2013 Ruling Page 15 Who shall bear the costs of the present application; 49. The general rule is that costs shall follow the event in accordance with the proviso to section 27 of the Civil Procedure Act, unless the court is satisfied otherwise. 50. In the present case, having held that the present application is merited, this court finds that the plaintiff/applicant is entitled to the costs of the present application.

CONCLUSION:

51. The upshot of the above is that the Notice of Motion Application dated 9th April, 2026 is merited and I accordingly allow the same on the following terms: - i. The application dated 09.04.2026 be and is hereby allowed. ii. This court hereby finds the defendant/respondent to be in contempt of the judgment delivered and dated 5th November, 2014 and Decree issued on 04.07.2019. iii. Consequently, Summons are hereby issued to the defendant/respondent to appear before this court on a date to be given to Show Cause why he should not be punished for contempt. iv. An order be and is hereby issued to the respondent to purge the contempt by vacating from the suit property within 14 days from the date of this ruling in full compliance with the judgment and decree of this court. v. Costs of this application be met by the respondent. ELC Case No. 256 Of 2013 Ruling Page 16 52. It is so ordered. DATED, SIGNED and DELIVERED at ELDORET this 17th day of SEPTEMBER, 2026. HON. C.K. YANO

JUDGE Ruling delivered in the presence of: - Mr. Nyachiro for the Applicant. No appearance for Mr. Miyienda for Respondents. Court Assistant – Laban ELC Case No. 256 Of 2013 Ruling
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