



**Kiricho v Kiricho & 6 others (Family Miscellaneous Application
E005 of 2022) [2024] KEHC 9853 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9853 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
FAMILY MISCELLANEOUS APPLICATION E005 OF 2022**

MA ODERO, J

JULY 26, 2024

BETWEEN

GERALD GACHUNIA KIRICHO PLAINTIFF

AND

JAMES WANJOHI KIRICHO & 6 OTHERS DEFENDANT

RULING

1. Before this Court for determination is the Notice of Motion dated 14th December, 2023 by which the Applicant Gerald Gachunia Kiricho seeks the following orders:-
 1. That the Court be pleased to cite the Respondent one James Mwangi Kiricho for contempt of court orders as earlier delivered and issued by this honourable court on 19th September, 2023 in his presence.
 2. That further the Honourable Court do recommend severe punishment to be meted against the Respondent upon confirmation of disobedience/ disregarding of the status quo orders as issued therein.
 3. That costs of this Application be provided for”
2. The Respondent James Mwangi Kiricho despite having been properly served did not file any reply to the application. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 26th April, 2024 whilst the Respondent did not file any submissions.

Background

3. This application arises from a ruling which was delivered by Hon. Lady Justice Muchemi on 17th August, 2022. In that ruling the Honourable Judge made the following orders:-



- (a) That stay pending the intended appeal is hereby granted against the judgment delivered on 28th February 2022 in CM Succession Cause No. 99 of 2018.
 - (b) That the applicant is hereby ordered to deposit Kshs. 100,000/= in court as security within 30 days in default of which these orders will stand vacated.
 - (c) That the appellant is granted 21 days to file the intended appeal.
 - (d) That the parties shall maintain status quo pending determination of the intended appeal.
 - (e) That each party to meet their own costs.”
4. The Applicant avers that although he was present in court at the time the above orders were made, the Respondent has been committing acts of wastage by intermeddling with the Deceased’s assets and by harvesting from the Applicants portion of land despite the orders of status quo.
 5. That the Respondent has been invaded the Applicants house armed with a panga and chased away school-going children.
 6. That due to the Respondents disobedience of the courts orders, the Applicant has been forced to make several report at Gatitu Police Station especially due to the threats made by the Respondent against children whilst armed with a panga.
 7. The Applicant now prays that the Respondent be cited and punished for contempt. As stated earlier the Respondent did not file any reply to this application nor did he file any written submissions.

Analysis and Determination

8. I have carefully considered the application before this court, as well as the written submissions on record. The only issue for determination is whether the Respondent is in contempt of the orders which were issued by the High Court on 17th August 2022.
9. The jurisdiction of the High Court to punish for contempt is found in Sections of the *Judicature Act* which provides:-
 - (1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and such power shall extend to upholding the authority and dignity of subordinate courts.
 - (2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.”
10. In *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another* [2005] KLR 828, the obligation to obey court orders was well explicated thus:-

“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 Nagaint whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that



it extends even to cases where the person affected by the order believes it to be irregular or void.” [own emphasis]

11. In the premises, the elements that the Respondent herein needed to prove are:-
 - (a) that the Orders of 17th August, 2022 were clear, unambiguous and binding on the respondent;
 - (b) that the Applicant had proper notice or knowledge of the terms of those Orders;
(see *Katsuri Limited v Kapurchand Depar Shah* [2016] eKLR)
12. The standard of proof applicable in contempt applications, is above a balance of probabilities, given the criminal connotations of contempt proceedings. In *Gatharia K. Mutikikia v Baharini Farm Ltd* [1985] KLR 227 the Court of Appeal stated as follows:-

“..... 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 offence which can be said to be quasi-criminal in nature.” [own emphasis]
13. It is important that the court satisfy itself that the person being accused of disobeying court orders had knowledge/notice of said court orders.
In *Oilfield Movers Ltd v Zabara Oil & Gas Limited* [2020] eKLR the court stated as follows:-

“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 persons liberty.....”
14. The orders which were made by the court on 17th August, 2023 were in my view clear and unambiguous. The same did not require any further interpretation.
15. The court allowed the prayer for a stay pending appeal on condition that Kshs. 100,000/= to be deposited as security within thirty (30) days and the court further order that the status quo in respect of the property in question be maintained pending determination of the intended Appeal.
16. The next question is whether the Respondent had knowledge of the said orders. Since that the sanction for contempt may involve deprivation of personal liberty, the court must be satisfied that the contemnor had notice or was aware of the orders alleged to have been breached.
17. The Applicant avers that the Respondent was in court on 17th August 2022 when the ruling was delivered and therefore must have had knowledge of the said orders.
18. I have perused the record. The judgment is indicated to have been delivered by way of video link. However the court record for 17th August 2022, clearly shows that on that date the Applicant was present in person. The record also indicates that the 2nd, 4th and 7th Respondents were also present in person. The 7th Respondent is James Mwangi Kiricho (the alleged contemnor).
19. Based on the above I am satisfied that the Respondent was present on the virtual link when the ruling was read out. He was therefore fully aware of the orders made by the court.



20. Further an Affidavit of Service dated 26th September, 2022 deponed by one Teobald Maina Kihia a process server indicates that the court order was served upon the Respondents. As such I find that the respondent had full notice of the orders which were made by the court.
21. The next question to be considered is whether the Respondent has acted in breach of the orders made on 17th August 2022.
22. The Applicant alleges that the Respondent has contravened the orders of '*status quo*' by interfering with and destroying the property of the Deceased, and by invading the portion of land occupied by the Applicant and threatening young children with a panga. That as a result of the Respondents actions the Applicant has had to make several reports to the police.
23. The Applicant has annexed to his application copies of photographs showing felled trees, crushed bushes (Annexures 'GGK (a) and (b)') as proof of his allegations. The Applicant has also annexed copies of various occurrence Book numbers for reports made at Gatitu Police Post. (Annexure 'GGK 1 (a)') There is also a police P3 form issued to the Applicant in respect of an assault on his person in which he sustained injuries assessed as 'harm'
24. However no evidence was annexed to prove that it was the Respondent who felled the trees in question or who interfered with the vegetation on that land. No Affidavit from a witness who saw the Respondent on the Applicants portion of land has been annexed.
25. Secondly evidence of reports made to the police does not amount to evidence of any wrongdoing. The police did not investigate those reports and find the Respondent culpable. The respondent has not been charged with any offence.
26. The P3 form produced by the Applicant indicates that he was assaulted by "a person known to him." The perpetrator is not named. The court cannot assume that it was the Respondent who assaulted the Applicant.
27. As stated earlier the standard of proof required in contempt proceedings is higher than a balance of probability. In my view that standard has not been met. All the court has are a series of allegations made against the Respondent but there is no tangible proof of any wrong-doing by the said Respondent.
28. Based on the foregoing I find that a critical aspect required to cite the Respondent for contempt has not been met. Accordingly I dismiss in its entirety the Notice of Motion dated 14th December, 2023. No orders on costs.

DATED IN NYERI THIS 26TH DAY OF JULY, 2024.

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MAUREEN A. ODERO

JUDGE

