



Karuga v Njiru; Mutai, Land Registrar Kiritiri (Contemnor) (Environment and Land Appeal 29 of 2018) [2023] KEELC 18917 (KLR) (23 March 2023) (Ruling)

Neutral citation: [2023] KEELC 18917 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL 29 OF 2018
A KANIARU, J
MARCH 23, 2023**

BETWEEN

LOISE NJERI KARUGA APPELLANT

AND

PATRICIA WAHETO NJIRU DEFENDANT

AND

**MARGARET MUTHONI MUTAI, LAND REGISTRAR
KIRITIRI CONTEMNOR**

RULING

1. By a motion on notice dated June 13, 2022 and filed on June 15, 2022, the applicant – Patricia Waheto Njiru – wishes to have the respondent/contemnor – Margaret Mutai, Land Registrar – Kiritiri – cited for contempt of this court’s order issued on August 24, 2021. Margaret should consequently be jailed or fined such sum of money as the court may deem just. It is also desired that the respondent be ordered to purge the contempt by complying with the said orders. The motion is expressed to be brought Under Order 51 Rule 1 of the *Civil Procedure Rules, 2010*, Sections 3a, 63A, and E, of the *Civil Procedure Act* (Cap 21) and all enabling law.
2. More specifically, the application came with four (4) prayers, one of which is now spent, leaving three (3) – prayers 2, 3, and 4, - for consideration at this stage. The prayers for consideration are spelt out thus:

Prayer 2: That this honourable court be pleased to cite the respondent for being in comtempt of the court order issued on August 24, 2021 and be jailed for six (6) months and/or fined such sum of money as the court may deem just.

Prayer 3: That the respondent be ordered forthwith to purge the contempt by strictly complying with orders of the court issued on August 24, 2021.



Prayer 4: That the costs of this application be provided for.

3. The application is premised on grounds, inter alia, that this court made an order that Patricia Waheto Njiru be registered as the proprietor of property No Mbeti/Kiamuringa/2393 and upon such registration an order of inhibition under section 68 of the [Land Registration Act](#) be registered to preserve the suit property; that the respondent/contemnor was duly served with the orders; that she refused to register the land as ordered and hence willfully refused to comply; and that such refusal undermines the dignity of the court.
4. The application came with a supporting affidavit which generally elaborated the grounds on which it is hinged. In particular, the applicant deposed, inter alia, that the court ordered that she be registered as owner of land parcel No Mbeti/Kiamuringa/2393 and upon such registration, an order of inhibition be placed on the register in order to preserve the land until conclusion of the appeal or until further orders. The court order was said to have been served on the respondent together with the instruments of registration. It would appear that the land already had a caution placed on it and the respondent is said to have directed that the caution be removed. The caution was removed but the respondent refused to effect registration as ordered by the court. According to the applicant, the respondent said that effecting registration as ordered by the court would amount to intermeddling with the property.
5. The applicant averred that refusal by the respondent to comply with the court order makes her susceptible to losses as the land is prone to illegal dealings. It was deposed that it is in the interest of justice and fairness that the orders sought be granted. To the supporting affidavit was annexed an affidavit of service, showing that the respondent was served on March 23, 2022 with the court order together with the instruments necessary to effect registration. She was served yet again on June 10, 2022.
6. Despite service, the respondent/contemnor did not respond to the application.
7. On October 27, 2022 the matter came up in open court and the applicant's counsel urged the court to allow the application as the respondent/contemnor had been served and had not responded to the application. The court decided not to allow the application as requested. This position was largely informed by the fact that the application is one for contempt which required to be proved on a scale higher than on a balance of probabilities. The court directed that submissions be filed and served on the respondent/contemnor.
8. On January 23, 2023, the matter came up in court again and the court was informed that submissions had been filed and served on the respondent/contemnor. The court then realised that there was an affidavit of service filed on January 11, 2023 showing that the respondent/contemnor was served on January 10, 2023 with the submissions and the date of the next appearance in court.
9. A date for ruling was then given. The court then set a date for ruling. I have read the submissions filed by the applicant and the authorities cited. It seems reasonably clear to me that the respondent/contemnor was served. She didn't respond to the application. The order to register the applicant as owner of the land in question was made by my predecessor. It is important to appreciate that it is only the office of the respondent/contemnor that can comply with that order. The order issued is clear and un-ambiguous. Refusal to obey it obviously amounts to contempt of court. The option to disregard or disobey it was not available at all to the respondent/contemnor.
10. In [Teachers Service Commission Vs Kenya National Union Of Teachers & 2 others \[2013\] eKLR](#) the court, while giving reasons for punishing a party for contempt, expressed itself as follows:

' The reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity



of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about safeguarding the rule of law.'

11. In this matter, it is shown that the respondent was served with the court order. Infact it appears that she was served more than once. It is clear also that she was served with the application now under consideration. In all the instances, she failed and/or refused to show herself as a person who is mindful and respectful of the rule of law. The reason given for her failure or refusal to obey the court order is that she would be intermeddling with property. If she had chosen to respond to the application, may be she would have shed more light on the issue of intermeddling. But she chose not to respond. The court is therefore in the dark concerning the issue.

12. In *Econet Wireless Kenya Ltd v Minister For Information and Communication & Another [2005] 1 KLR 828*, the court expressed itself as follows:

' It is essential for the maintenance of the rule of law and order that the authority and 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 a court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of the obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void.'

13. The considered view of this court is that respondent/contemnor was served with the court order. The terms of that order were clear and binding on her as she is the holder of the only office that could effect the it. She refused or failed to comply with the order and by so doing violated it. Such breach is in my view deliberate and/or willful as the reason given for not complying was not explained to the court. It is necessary to point out that compliance with orders of court is not something that any party can be allowed to play about with. It is a mandatory requirement meant to ensure that the rule of law is upheld at all times.

14. Contempt of court is well demonstrated in this matter and the court has no reason to doubt it as there is absolutely no rebuttal from the respondent/contemnor. I therefore find the respondent/contemnor in contempt. She is given 90 days to comply with the order and thus purge the contempt. If that is not done, the respondent/contemnor will pay a fine of 200,000/- or in default serve six (6) months imprisonment. The respondent/contemnor to personally bear the costs of this application.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 23RD DAY OF MARCH, 2023.

In the presence of defendant/Applicant; plaintiff/respondent (absent) and in the absence of contemnor.

Court assistant: Leadys

A.K. KANIARU

JUDGE

23.3.2023

