



REPUBLIC OF KENYA



KENYA LAW
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**Muigai v Njonge & 3 others (Environment & Land Case
57 of 2017) [2023] KEELC 16423 (KLR) (20 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16423 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 57 OF 2017**

**JG KEMEI, J
MARCH 20, 2023**

BETWEEN

MICHAEL NJONGE MUIGAI PLAINTIFF

AND

PETER MUNGAI NJONGE 1ST DEFENDANT

ANTONY KIMANI NJONGE 2ND DEFENDANT

FRANCIS NJUGUNA NJONGE 3RD DEFENDANT

RICHARD WANJOYA NJONGE 4TH DEFENDANT

RULING

1. The plaintiff/applicant filed the instant application dated October 12, 2022 seeking orders that;
 - a. Spent.
 - b. This honorable court be pleased to issue a notice to show cause against the 4th defendant/respondent, Richard Wanjoya Njonge alias Richard Wanjoya Njeri to show cause why he should not be put to civil jail for non-compliance with the decree issued on the December 10, 2020.
 - c. The costs of this application be provided for.
2. The application is based on the grounds thereat and supporting affidavit of even date of Michael Njonge Muigai, the plaintiff. He deponed that this court on December 10, 2020 issued a decree by ordering a permanent injunction against the defendants from interfering with the plaintiff's quiet possession and enjoyment of plot number LR 74/269 and plot number 74/170 (suit lands). That the 4th defendant was served with a certified copy of the decree on September 26, 2022 where he



acknowledged receipt but refused to sign. That the 4th defendant has continued to blatantly disobey the court orders hence the notice to show cause.

3. On October 18, 2022 the court directed that the application be served and canvassed by way of written submissions. despite service as shown by affidavit of service sworn on October 31, 2022 the application is unopposed.
4. The applicant through the firm of Jesse Kariuki & Co Advocates filed submissions dated November 10, 2022. He submitted that order 40 rule 3 Civil Procedure Rules empowers the court to punish any person guilty of contempt of court. That such punishment is further augmented by section 29 of the Environment and Land Court Act and section 66 (3) Civil Procedure Act. He accused the 4th defendant of flagrantly disobeying the court orders issued on August 31, 2020 by continually harassing the tenants in plot No LR 74/769 and LR 74/170. Urging the court to ensure compliance of its orders as directed, the applicant relied on the cases of Samuel M.N Mweru & others v National Land Commission & 2 others [2020] eKLR and Teachers Service Commission v Kenta National Union of Teachers & 2 others [2013] eKLR.
5. The main issue for determination is whether the application is merited.
6. The application is brought pursuant to sections 1A, 1B & 3, 3A Civil Procedure Act, section 25, 27 and 28 of the Contempt of Court Act, sections 3,4,13,18 & 19 Environment and Land Court Act and articles 40,48,159(2)(d) and 259 Constitution of Kenya. The applicant cited Contempt of Court Act specifically No 46 of 2016 Laws of Kenya which was declared unconstitutional by the High Court in the case of Kenya Human Rights v Attorney General & Anor [2018] eKLR.
7. Black's Law Dictionary 10th Edition at page 360 defines contempt as follows;

“Contempt is a disregard of, disobedience to, the rules, or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behaviour or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body.”
8. Section 29 of the Environment and Land Court Act provides that any person who refuses, fails or neglects to obey an order or direction of the court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.
9. Section 63(c) of the Civil Procedure Act provides as follows;-

“In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed

—

 - (a) ...
 - (b) ...
 - (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold.”
10. Order 40 rule 3 of the Civil Procedure Rules provides the consequences of contempt which includes in case of disobedience or breach of any terms of court order, an order for the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in prison for a term not exceeding 6 months. This goes to show that the punishment for contempt is



not light seeing that other than attachment of the property of the guilty contemnor, the liberty of the contemnor is also at stake.

11. The standard of proving contempt of court was aptly discussed in the case of *Gatharia K Mutikika v Baharini Farm Limited* [1985] KLR 227 where it was held that contempt of court is in the nature of criminal proceedings and, therefore, proof of a case against a contemnor is higher than that of balance of probability. This is so because liberty of the alleged contemnor is usually at stake and the applicant must prove willful and deliberate disobedience of the court order, if he were to succeed.
12. In the case of *Republic v Attorney General & another Ex parte Mike Maina Kamau* [2020] eKLR the court citing with approval the High Court case of South Africa in the case of *Kristen Carla Burchell v Barry Grant Burchell*, Eastern Cape division case No 364 of 2005 case of outlined the ingredients for proving contempt of court that an applicant for contempt of court should prove that the terms of the order were clear and unambiguous and binding on the defendant; that the defendant had knowledge or proper notice of the orders; that he acted in breach of the terms of the order and that his conduct was deliberate.
13. In the instant case it is not doubtful that a consent judgement was entered herein on August 31, 2020 by the defendants' counsel Mr Muturi Njoroge and the plaintiff's counsel Mr Jesse Kariuki. The said consent was adopted as an order of the court and a decree issued on the December 10, 2020 as follows;

“A permanent injunction be and is hereby issued restraining the defendants their agents servants employees people working under them or for themselves from entering encroaching selling, demanding rent or in any other way interfering with the plaintiffs quiet possession and use of plot number 74/269 and plot No 74/170 . Each party to meet their own costs.”
14. From the above orders of the court, I find that the orders were clear unambiguous and bound all the defendants, the 4th defendant included. There is no evidence placed before this court by the 4th defendant to show the contrary.
15. Did the 4th defendant have notice or knowledge of the said orders? It is on record that the orders aforesaid are orders arising from the consent of the parties and adopted by the court on the August 31, 2020. The applicant has deponed that the 4th defendant was served on the September 26, 2022 which averment has not been challenged by the 4th defendant. In any event the court presumes knowledge on the part of the 4th defendant for the reason that the orders arose from the consent of the parties recorded in court in the presence of their counsel. I find that the 4th defendant was aware and had knowledge of the court orders.
16. It is the applicants case that the 4th defendant has blatantly refused to comply with the orders of the court by harassing the tenants in plots numbers 74/269 and plot No 74/170. The above orders prohibited the defendants, the 4th defendant included from entering selling demanding rent or in any other way interfering with the plaintiff's quiet possession and use of the suit lands. The conduct of harassing the tenants in my respectful view amounts to conduct that was prohibited and or enjoined by the orders of the court aforesaid.
17. The court finds that the actions of the 4th defendant are willful deliberate and in disobedience of the court orders of this Hon court.
18. In the end the court finds the meritorious.
19. Final orders and disposal



- a. This honorable court finds the 4th defendant/respondent, Richard Wanjoya Njonge alias Richard Wanjoya Njeri guilty of disobedience of the orders recorded on August 31, 2020 and contained in the decree issued on December 10, 2020.
- b. The 4th defendant/respondent, Richard Wanjoya Njonge alias Richard Wanjoya Njeri be and is hereby ordered to appear in court on the April 13, 2023 for mitigation and to show cause why he should not be committed to civil jail for non-compliance with the decree issued on the December 10, 2020.
- c. I make no order as to costs.

20. It is so ordered.

DELIVERED, DATED AND SIGNED AT THIKA THIS 20TH DAY OF MARCH, 2023 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of

Jessee Kariuki for Plaintiff/Applicant

1st, 2nd and 3rd Defendants/Respondents – Absent

4th Defendant/Respondent – Absent but served

Court Assistants – Kevin/Lilian

