



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyaanga v Ogendi & 7 others (Civil Appeal 60 of 2019)  
[2023] KEHC 3413 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3413 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CIVIL APPEAL 60 OF 2019  
WA OKWANY, J  
APRIL 27, 2023**

**BETWEEN**

**ENOCK NYAANGA ..... APPELLANT**

**AND**

**JAMES OGENDI ..... 1<sup>ST</sup> RESPONDENT**  
**ROSE NYAUMA ..... 2<sup>ND</sup> RESPONDENT**  
**DANIEL MAKE ..... 3<sup>RD</sup> RESPONDENT**  
**PETER KARAYA ..... 4<sup>TH</sup> RESPONDENT**  
**WILLIAM OMAIYO ..... 5<sup>TH</sup> RESPONDENT**  
**JACKSON MIRERI ..... 6<sup>TH</sup> RESPONDENT**  
**BATHSHEBA BITOYO ..... 7<sup>TH</sup> RESPONDENT**  
**RICHARD GECHIKO – DISTRICT CLERK ..... 8<sup>TH</sup> RESPONDENT**

*(Being an Appeal against the Ruling of Hon. W. C. Waswa (Mr.) – RM  
Nyamira dated and delivered at Nyamira on the 18th day of November 2019  
in the original Nyamira Chief Magistrate’s Court Civil Case No. 130 of 2019)*

**RULING**

1. The Applicants herein who are the Respondents in the appeal, sued the Appellant before the Lower Court in Nyamira CMCC 130 of 2019 seeking the following orders: -
  - “(a) That the defendant (now appellant) his agents, servants, employees, attorneys or any other person whatsoever acting on his behalf be and hereby



permanently restrained from interfering with the affairs of Nyaramba Pag Kenya Church District any way and/or manner or manner or at all (sic).

(b) That the defendant herein be made to account for the money he has collected from the church and the same be returned to the church.

(c) Costs be provided for in favour of the plaintiffs herein.”

2. Concurrently with the plaint, the Applicants also filed an application dated October 25, 2019 seeking an order of injunction to restrain the Respondent by himself, his agents, servants, employees or any other person whatsoever acting on his behalf from dealing or conducting any church functions, presiding over meetings, receiving funds from churches within Nyaramba PAG Kenya Church District and or such act under the title of District Overseer pending the hearing and determination of the suit.
3. In a ruling delivered on November 18, 2019, the Lower Court granted the order of injunction sought and directed the OCS Ekerenyo Police Station to ensure compliance with the orders.
4. Aggrieved by the said order of injunction, the Appellant filed the instant appeal and also sought orders to stay the proceedings and injunctive orders of the Lower Court issued on November 18, 2019.
5. In a ruling delivered on February 6, 2020, this court, differently constituted, dismissed the Appellant’s application for stay and directed that the orders issued by the trial court remain in force pending the hearing and determination of the appeal and/or the suit before the Lower Court.
6. Following the said ruling of February 6, 2020, the Respondents/Applicants filed the application dated December 14, 2021 which application is the subject of this ruling. In the said application, the Applicants seek the following orders: -
  - i. That Rev Enock Nyaanga, Rev Sosper Moindi, Shadrack Mochenwa, Enock Nyangondi, Rydiah Charles, Samuel Nyakoe, Florence Nyamweno, Job Kabori, Vincent Maina be summoned to appear before this honourable court to show cause why they should not be committed to civil jail for blatantly failing to comply with orders issued by this Honourable Court on 6<sup>th</sup> day of February 2020 which confirmed the orders of the lower court dated the 18<sup>th</sup> day of November 2019.
  - ii. That on failing to show necessary cause, the said persons be committed to civil jail for a period of six (6) months in that the said persons, have disobeyed the Orders of this honourable court made on the 6<sup>th</sup> day of February 2020 which confirmed the orders of the lower court dated the 18<sup>th</sup> day of November 2019.
  - iii. That this Honourable Court be pleased to impose a penalty of a fine against the Rev. Enock Nyaanga, Rev Sosper Moindi, Shadrack Mochenwa, Enock Nyangondi, Rydiah Charles, Samuel Nyakoe Florence Nyamwengo, Job Kabori, Vincent Maina and in default of payment thereof their movable and immovable assets including but not limited to land and buildings be attached and sold to satisfy the penalty for contempt of court.
  - iv. That the Re Enock Nyaanga, Rev Sosper Moindi, Shadrack Mochenwa, Enock Nyangondi, Rydiah Charles, Samuel Nyakoe, Florence Nyamweno, Job Kabori, Vincent Maina be restrained from interfering with the Nyaramba Pag Church District operations and in particular interfering with the activities of Ekerenyo Pag Central Church situated on North Mogirango/boisanga/6606 Covering An Area Approximately 0.080 Hectares.
  - v. That the costs of and incidental to this application be provided for.



- vi. Any other remedy that the honourable court deems fit and just to grant.
7. The application is supported by the eighth Applicant's affidavits and is premised on the grounds that: -
  1. That leave to bring this application has been duly granted.
  2. That this honourable court gave clear orders dated the 6<sup>th</sup> day of February 2020 which confirmed the orders of the lower court dated the 18<sup>th</sup> day of November 2019. That the said orders were very clear and the same was made in the presence of the parties and their advocates both before this court and before the magistrate's court.
  3. That the lower court had given orders which were clear as herein under
    - i. That an interim order of injunction do issue restraining the respondent herein by himself, his agents, servants employees or any other person whatsoever acting on his behalf from dealing or conducting any church functions, presiding over meetings, receiving funds from churches within Nyaramba PAG Kenya Church District and or such act under the title of District Overseer pending the hearing and determination of this suit."
    - ii. OCS Ekerenyo Police Station to ensure that the order is implemented and complied with.
    - iii. Costs of the application to the applicants/respondents.
  4. That the Appellant/respondent herein purporting to act as an overseer has literally taken over Ekerenyo Central Pag Church which is under Nyaramba PAG District against the orders of this Honourable Court.
  5. That the appellant is being assisted by the Rev Sosper Moindi, Shadrack Mochenwa, Enoch Nyangondi, Rydiah Charles, Samuel Nyakoe, Florence Nyamweno, Job Kabori, Vincent Maina to manage the said church against the orders of this honourable court.
  6. That the appellant/respondent herein without any justifiable cause or excuse have gone ahead and are interfering with the activities of the Nyaramba Church District as if there were no orders aforesaid.
  7. That the respondent has continued conducting meetings, receiving monies from the churches in brazen breach of the court orders.
  8. That in order to circumvent the orders of the honourable court the respondent has now changed the name of Nyaramba Pag-k District To Ikonge PAG – K District without any authority from this court or at all.
  9. That the respondent are aware of the orders of the honourable court but have refused to obey the same.
  10. That the respondent herein does not have any respect for the court orders or at all.
  11. That to date the respondent has never challenged the aforesaid orders either in appeal to the court of appeal or review or at all as the same are still in existence.
  12. That if the orders prayed for herein are not granted then the applicants will be put in great prejudice and the orders of the honourable court rendered useless by being disobeyed with impunity.



13. That the orders of court ought to be obeyed by all and sundry for order to prevail in the society.
14. That the balance of convenience militates towards the grant of the orders prayed for herein.
8. The 2<sup>nd</sup> contemnor Pastor Shadrack Mochenwa Onchari opposed the application through his Replying Affidavit. He describes himself as a cited co-contemnor – and avers that the alleged co-contemnors were not parties in the Lower Court suit or the appeal and were therefore not served with the pleadings and the court order that had allegedly been disobeyed. He further states that the application is incurably defective, inept and wrongly before this court as the court became functus officio upon delivering the ruling on the stay application.
9. He states that this application should have been filed before the Lower Court which is seized with jurisdiction over the matter and which issued the injunctive orders. He reiterates that the alleged co-contemnors were not served with the proceedings that gave rise to the orders of injunction and should therefore be excluded from the contempt proceedings. He adds that these contempt proceedings resulted in a Notice to Show Cause and Warrants of Arrest against the 3 alleged contemnors who were released on cash bail of Kshs 25,000/= each yet the orders in question were issued by the Lower Court and not the High Court.
10. The 1<sup>st</sup> Petitioner, Reverend Enock Nyaanga, opposed the application through his Replying Affidavit sworn on March 9, 2023 wherein he states that the application is defective and offends the mandatory provisions of the law that requires the Applicant to seek the leave of the court before commencing contempt of court proceedings.
11. He further states that the instant application ought to have been instituted before the trial court.
12. The Petitioner avers that the application is founded on mere allegations of disobedience of court orders without tangible proof.
13. Parties canvassed the application by way of written submissions which I have considered. The main issues for determination are as follows: -
  - (a) Whether this court has the jurisdiction to hear and determine the application.
  - (b) Whether the Applicants should have sought and obtained leave to file the application.
  - (c) Whether the application is merited.

## **Jurisdiction**

14. The Respondents' argument was that since the orders alleged to have been disobeyed were issued by the Lower Court, and that this court only dealt with and dismissed an appeal challenging the impugned orders, the Applicants ought to have filed the application before the Lower Court.
15. The Respondents argued that this court became functus officio upon determining the appeal and therefore lacks the jurisdiction to hear and determine the application. It was submitted that this court can only deal with the issue of contempt, if it came on appeal, by invoking Section 5 of the *Judicature Act* so as to uphold the powers of the Lower Court.
16. The Applicants argued that this court has the jurisdiction to hear and determine the application as it dismissed the appeal challenging the impugned Lower Court orders which orders this court also confirmed.
17. It is trite that jurisdiction is everything without which the court cannot make any further step and should down its tools. (See *Owners of Motor Vessel "Lilians" v Caltex Oil Kenya Ltd* [1989] eKLR).



18. This court is aware that prior to the enactment of the *Magistrates' Courts Act* No 46 of 2016 which came to force on January 2, 2016, magistrates had no jurisdiction to punish for contempt save for acts of contempt on the face of it or disobedience of orders with regard to grant of temporary injunction under Order 40 of the *Civil Procedure Rules*. During that time, jurisdiction to punish for contempt was a preserve of the High court as a court with original jurisdiction pursuant to section 5(1) of the *Judicature Act*. (See *Ramadhan Salim vs Evans M Maabi T/A Murphy Auctioneers and Another* (2016) eKLR.)
19. The *Contempt of Court Act* that came into force on January 23, 2017 provided for procedure for handling proceedings on contempt committed on the face of the court and those committed outside court but classified as constituting an offence committed against the court. The Act did not deal with disobedience of court judgments or decrees as provided under Section 10(3) of the *Magistrates' Courts Act*. Section 36 of the *Contempt of Court Act*, provides that its provisions supersede those of any written law. This Act has however since been nullified. The said Act did not amend the provisions of the *Magistrates' Courts Act* and in particular Section 10(3) thereof which is relevant in this case. It is therefore, in my view the nullification of the *Contempt of Court Act* by the High Court on November 9, 2018 has had no effect on the powers of the magistrate's court in punishing contemnors for acts of disobedience committed against its orders under Section 10(3) of the *Magistrates' Act*. The said section grants magistrates the powers to hear and punish for contempt arising out of their decisions.
20. I am therefore in agreement with the respondent's argument that the court with original jurisdiction is the court which issued the impugned orders and not this court. (See *HAO vs PLS* (2017) eKLR.)
21. Having found that this court will make no step in the event it finds that it has no jurisdiction, I find that I cannot proceed to determine the merits on the contempt proceedings for doing so will usurp the authority of the Magistrates' Court and further prejudice its determination should a similar application be filed in the said court. Determining the contempt application will also prejudice the parties' right of appeal in case of an appeal should they find it necessary to appeal against the magistrate's decision on the contempt application.
22. Needless to say, the case before the Lower Court is still pending and I find that any complaint regarding the alleged disobedience of the Lower Court orders should have been placed before the Lower Court in the first instance in which case, this court's jurisdiction over the issue of contempt can only be invoked on appeal.
23. For the above reasons I find that the instant application is not merited and I therefore dismiss it with no orders as to costs.
24. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIA MICROSOFT TEAMS THIS 27TH DAY OF APRIL 2023.**

**W. A. OKWANY**

**JUDGE**

