



Nyamai & 291 others v South Eastern University College (Environment & Land Case E001 of 2021) [2023] KEELC 17201 (KLR) (27 April 2023) (Ruling)

Neutral citation: [2023] KEELC 17201 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITUI
ENVIRONMENT & LAND CASE E001 OF 2021**

LG KIMANI, J

APRIL 27, 2023

BETWEEN

WILLIAM NYAMAI & 291 OTHERS PLAINTIFF

AND

SOUTH EASTERN UNIVERSITY COLLEGE RESPONDENT

RULING

1. The Applicants filed an application dated 30th December 2022 seeking the following Orders:
 1. Spent.
 2. That the court be pleased to commit the O.C.S Kwa Vonza Police Station, James Pauline, Muthui Sammy Mutinda Kamami and James to civil jail for disobeying the court orders issued on 22nd December 2022.
2. In the supporting affidavit, the 1st Applicant deposed that the court issued temporary injunctive orders on 22nd December 2022 and despite being served with the orders, the contemnors have hired people to evict the Applicants and have descended on their crops and fences. They aver that the contemnors actions have grossly painted our judicial system as a lame duck and have put its dignity and reputation into great ridicule.

Analysis and Determination

3. The application dated 30th December 2022 seeks to cite several individuals for contempt of court, stating that they have disobeyed the court's temporary injunctive orders issued on 22nd December 2022. In the supporting affidavit thereto, the Applicants state they have annexed photographs as proof of destruction of crops and fences but I have been unable to locate the photos in file.



4. Section 5 of the Judicature Act cap 8 Laws of Kenya 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 that 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.”

5. Therefore, the law that governs contempt of court proceedings is the English law applicable in England at the time the contempt was committed. Under rule 81.4 of the English *Civil Procedure Rules (Amendment No. 3) Rules, 2020* provides for the requirements of a contempt application.

6. Contempt of a court order is a serious offence and is in the nature of a criminal offence and thus proof and thus proof of a case against a contemnor is higher than that of balance of probability. This is because liberty of the subject is usually at stake and the applicant must prove wilful and deliberate disobedience of the court order if he were to succeed. This was aptly stated by the court in the case of *Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui* [2021] eKLR where the court cited with approval the case of *Gatharia K. Mutikika v Baharini Farm Limited* [1985] KLR 227 also cited by the Petitioners that:

“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a 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 criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature.

However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the party of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.”

7. Looking at the court order issued on 22nd December 2022 it is note that the same is directed at the Respondent in this suit. The persons mentioned in the application dated 30th December 2022, the OCS Kwa Vonza Police Station, James Pauline, Muthui Sammy, Mutinda Kamami and James are not Respondents in this suit. Apart from the OCS Kwa Vonza Police Station the other persons are not known and it is not explained in the supporting affidavit how they are connected to this suit or the application herein.

8. On the issue of service of the court order on the Respondent, the affidavit of service of one Boniface M Kyenza sworn on 29th December 2022 states that the process server stated received instructions from



Ms Carol & Co. Advocates. The said Advocates are not known within the context of this suit as there is no such advocate on record. Further, service on the Respondent is said to have been effected through email seku.ac.ke. No explanation is given as to where the said email address was obtained from and the copy of email alleged to have been attached to the affidavit of service is not attached as stated. It is noted that the email address given by the Respondent in their pleadings is different from the one given in the affidavit of service.

9. The acts of contempt of court that the persons cited as described in the supporting affidavit of William Nyamai sworn on 30th December 2022 are said to be that “the contemnors despite being aware of the existence of the said orders, hired people from the 1st Defendant to evict the Applicants and they descended on the Applicants crops and fences.” There is no explanation given how the acts of descending on crops and fences amount to eviction of the Applicants or contempt of the courts orders. As stated earlier the photographs said to have been attached as proof of contempt are not attached.
10. In the Courts view the acts complained of fall short of what would amount to acts of contempt of the court orders.
11. The upshot of this is that the application dated 30th December 2022 is hereby dismissed with costs to the Respondent.

DELIVERED, DATED AND SIGNED AT KITUI THIS 27TH DAY OF APRIL, 2023.

HON. L. G. KIMANI

ENVIRONMENT AND LAND COURT JUDGE – KITUI

Ruling read virtually in open court in the presence of-

Musyoki C/A

Kalwa Advocate for the Plaintiff/Applicant

M/S Wambui Advocate for the Respondent

