



**Wings of Life Gospel Church International Trustees v Somo & 5 others (Environment & Land Case E132 of 2021) [2023] KEELC 16972 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16972 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E132 OF 2021**

**AA OMOLLO, J  
APRIL 27, 2023**

**BETWEEN**

**WINGS OF LIFE GOSPEL CHURCH INTERNATIONAL  
TRUSTEES ..... PLAINTIFF**

**AND**

**HUSSEIN ADAN SOMO ..... 1<sup>ST</sup> DEFENDANT  
NAIROBI CITY COUNTY ..... 2<sup>ND</sup> DEFENDANT  
CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT  
MINISTRY OF LANDS & PHYSICAL PLANNING ..... 4<sup>TH</sup> DEFENDANT  
DIRECTOR OF SURVEYS ..... 5<sup>TH</sup> DEFENDANT  
ATTORNEY GENERAL ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. For determination is the Notice of Motion application dated 7<sup>th</sup> October, 2022 seeking the following orders;
  1. Spent
  2. That the Officer Commanding Police Division (OCPD) Buruburu Police Station and/or high court the Court baliff do arrest Hussein Adan Somo or in compliance with the sentencing Court Order of 15<sup>th</sup> December, 2021 and he be committed to the Government Prison/Civil jail for (6) months for contempt of this Honourable Court Orders and/or because of defying the Orders therein and issued on 17<sup>th</sup> January, 2021.
  3. That warrant of arrest be effected and/or issued by this Honourable Court directly to the Officer Commanding Buruburu Police Station to arrest Hussein Adan Somo in violation of



order of 15<sup>th</sup> December, 2021 and immediately hand him over to the civil jail authority in execution of Orders given on 15<sup>th</sup> December, 2021 and equally the Court baliff be ordered or directed accordingly in alternative.

4. That the court do issue any other order as deem fit in the circumstances.
5. That 1<sup>st</sup> Respondent do bear cost of this Application.
2. The application is supported by the grounds listed on its face and on the affidavit of Gerishon K. Njoroge who introduced himself as the chairman of the Plaintiff. Mr. Njoroge deposed inter alia that the 1<sup>st</sup> defendant has not complied with orders Nos, 1 – 4 issued on 17<sup>th</sup> January, 2022 on sentencing. He pleaded that the defendant had only complied with paying the fine of Kshs.100,000/=. He avers that in total violation of the orders, the 1<sup>st</sup> defendant has started construction on the suit property evidenced by the photographs annexed. He added that the 1<sup>st</sup> defendant is taking the court for granted with intent to grab the Plaintiff's land.
3. In contesting the grant of the orders sought, the 1<sup>st</sup> defendant filed a replying affidavit dated 13<sup>th</sup> December, 2022 where he deposed that he had given the Plaintiff unrestricted access to and possession of the portion in parcel No. 209/16780 IR 211484 previously occupied by the plaintiff prior to its eviction on 13<sup>th</sup> & 14<sup>th</sup> April, 2021. The 1<sup>st</sup> defendant argued that the plaintiff have admitted not having any intention of occupying what they did not occupy prior to their eviction.
4. The 1<sup>st</sup> Defendant state that he is glad to continue giving the plaintiff access adding that to date, he had not seen the applicant or its congregants come to use the suit portion. He denied that he is in breach of the court order and according to him, the plaintiff's worship structure was on 15% of the land LR 209/16780 and the other 85% was on L.R 209/16779. He rely on the annexed affidavits of John Ngugi, the surveyor and Samson Mungai as well as sketch maps for the area.
5. I have considered the submissions filed by both parties. The question for determination by this court is whether the 1<sup>st</sup> defendant is still in contempt of this court's order issued on 17<sup>th</sup> January 2021. The 1<sup>st</sup> defendant has not denied he is currently undertaking construction on the suit land LR 209/16780, IR 211484. His point of divergence with respect to the application is that he is not constructing on the suit portion which he has always allowed the plaintiff to access the portion.
6. In the ruling on the contempt application delivered on 21<sup>st</sup> October, 2021, Justice Okong'o referred to the earlier orders he had granted on 23<sup>rd</sup> April, 2021 which order stated thus;

“Pending the hearing of the application interpartes or further orders by the court, the 1<sup>st</sup> and 2<sup>nd</sup> defendants are restrained on a temporary basis from demolishing the plaintiff's structures, evicting the plaintiff, selling, charging and/or interfering in any manner whatsoever with the Plaintiff's possession of all that parcel of land known as L.R No. 209/16780, I.R 211484 also referred to as Plot “B” Off Racecourse and General Waruinge Road (hereinafter referred to as “the suit property”). For the avoidance of doubt, possession of the suit property shall revert to and shall remain what is was prior to the alleged forceful entry into the property and eviction of the plaintiff therefrom on 13<sup>th</sup> and 14<sup>th</sup> April, 2021.”
7. At page 9 of the ruling of 21<sup>st</sup> October, 2021, the judge stated “the 1<sup>st</sup> defendant was aware that he was required pursuant to the said order to hand over possession of the suit property to the plaintiff. The 1<sup>st</sup> defendant came to court to set aside the said order which application was declined.
8. Despite the order of 23<sup>rd</sup> April 2023 still being in force, Okongo J in his ruling on sentencing delivered on 15<sup>th</sup> December, 2021, made the following order in paragraph 2; “The 1<sup>st</sup> defendant is given a further



14 days from the date hereof within which he shall purge the contempt by granting the plaintiff unconditional and unrestricted access to and possession of the portion of all that parcel L.R No. 209/16780, IR. 211484 referred to as plot B off Race Course & General Waruinge road, Nairobi that was occupied by the plaintiff prior to its eviction.”

9. I do agree that the orders of 23<sup>rd</sup> April 2021 and 21<sup>st</sup> October, 2021 referred to the whole suit property. Okong’o J. seems to have varied this order during sentencing when he directed the 1<sup>st</sup> defendant to comply with order 2 quoted herein above. The plaintiff has not informed the court through his pleadings that it has been denied use, occupation or access of the portion it previously used prior to its eviction on 13<sup>th</sup> and 14<sup>th</sup> April, 2021
10. The 1<sup>st</sup> Defendant in his replying affidavit deposed that he is not doing anything on the portion that was previously occupied by the plaintiff. In their supplementary affidavit, the plaintiff made reference to the order on conviction of the contempt and sentencing. At paragraph 8, Mr. Njoroge deposes thus;

“The 1<sup>st</sup> defendant has demolished and continued as we talk to build and put in a new construction in the suit property with impunity as photographs will show in all my earlier affidavits that clearly indicate the magnitude and process of illegal events, demolition of the Church and its buildings, fencing and new construction done with impunity of the highest order.”
11. The plaintiff does not indicate when the demolition of the church took place. This was important given the background of this case that as at the time the orders were issued on 23<sup>rd</sup> April, 2021, the plaintiff had been evicted from the suit premises. However, the injunction orders obtained returned them to possession. If there was any demolition post the grant of the orders in question, or any new actions that amount to contempt, the plaintiff is at liberty to move the court afresh for the parties to be heard on the fresh contempt on merit.
12. The production of the photographs showing construction going on in the suit property in my opinion and I so hold does not in itself prove interference with the portion granted by the court. The issue of whether or not the 1<sup>st</sup> defendant grabbed the suit land or parcels of land in the area can only be determined after the hearing and determination of the suit on its merits.
13. In conclusion, I find that the plaintiff has not demonstrated there is breach of the orders of this court issued on 15<sup>th</sup> December, 2021. The application is dismissed with costs in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF APRIL 2023**

**A. OMOLLO**

**JUDGE**

In the presence of:

Mr Kahuthu advocate for the Plaintiff

Ms Waweru h/b for Katwa for the 1<sup>st</sup> Defendant

Mr Nyakoye for the 2<sup>nd</sup> Defendant

N/A for A.G.

