



**Langat (Suing as a Personal Representative of the Estate of the Late Kiplangat
Soi alias Shadrack Kiplagat arap Soi) v Chumo & another (Environment &
Land Case 139 of 2017) [2023] KEELC 16817 (KLR) (13 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16817 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE 139 OF 2017**

MC OUNDO, J

APRIL 13, 2023

BETWEEN

MOSES KIPTOO LANGAT PLAINTIFF

**SUING AS A PERSONAL REPRESENTATIVE OF THE ESTATE OF THE LATE
KIPLANGAT SOI ALIAS SHADRACK KIPLAGAT ARAP SOI**

AND

JOHN KIPRONO CHUMO 1ST DEFENDANT

SAMWEL ROTICH 2ND DEFENDANT

RULING

1. Via an application dated the 16th June 2022 brought pursuant to the provisions of Order 40 Rule 3 of the *Civil Procedure Rules*, Section 3A of the *Civil Procedure Act* and all the provisions of the law, the Applicant herein seeks to cite the 2nd Respondent for contempt of the court orders of 18th December, 2017 and orders of *status quo* and warning given by this court on 29th January 2018. That leave be granted to the Plaintiff/Applicant to fine the contemnor Ksh. 100,000/= for contempt of court, to be enforced by the Officer Commanding Station Kipkelion Police Station.
2. The Applicant further seeks for costs of this application and such further or other orders as the court may deem just.
3. The application was supported by the grounds set out therein and an annexed affidavit of Moses Kiptoo Langat the Applicant herein dated the 16th June 2016 to the effect that by an order of the Court granted on 18th December, 2017, the Defendants/Respondents had been temporarily restrained from trespassing on, wasting, constructing on, alienating or otherwise interfering or dealing with the Plaintiff's property being title No.598/1/1 within Kipkelion Township. That when the matter was mentioned on 29th January 2018, the court had given a warning to the Defendants against disobeying



- the court's orders wherein it had given an order of maintenance of the *status quo* which *status quo* had been maintained up to the 15th June 2022 when the 2nd Defendant/Respondent prevented the Plaintiff from carrying out repairs on his property and had proceeded to dig trenches on the land.
4. That this had not been the first time that the 2nd Defendant/Respondent had disobeyed the order, for he had previously prevented the Plaintiff's tenant one Nickson Marit from accessing his shop by blocking the premise door using a tractor.
 5. That the 2nd Respondent has been in the habit of interfering with the Plaintiff's property despite there being injunctive orders and had been heard to had say that he did not believe in court orders. That unless checked by the court, he would continue to disobey the court orders of *status quo* which had been issued on the 18th December 2017.
 6. In response to the application, the 2nd Respondent, via his Replying Affidavit sworn on 14th September 2022 had averred that the allegations that he had prevented the Applicant from carrying out repairs on his property and further that he had proceeded to dig trenches on the land were untrue, malicious and laced with ulterior motive aimed at misleading the court.
 7. That the court was a court of equity and those who come to equity must come with clean hands. That it was settled law that a person who approaches the Court for granting relief, equitable or otherwise, was under a solemn obligation to candidly and correctly disclose all material and important facts which had a bearing on the adjudication of the issues raised in the case.
 8. That the allegations that he had also blocked the Applicant's tenant one Nickson Marit from accessing his shop, by use of a tractor, were not only sensational but also untrue and that he even did not know a person going by such a name and therefore the Applicant's aim was to make dirty the pure streams of justice by using the court to achieve his mala fides objectives.
 9. That he was a law-abiding citizen who respected court orders as he had never disobeyed any order issued by the court. That the matter herein was initiated in the year 2017 between the Applicant and one John Kiprono Chumo. That he had been joined to the suit vide an amended Plaint dated 1st March 2018 wherein the orders of the court which had just been brought to his attention vide this Application, had been issued on the 20th December 2017 before he had been joined to the suit, and which orders had been directed to John Kiprono Chumo who was the only Respondent in the matter.
 10. That no evidence had been adduced that the said orders had been served upon him. That the Application was in contravention of the provisions of Order 40 Rule 6 of the [Civil Procedure Rules](#). That the order to which the Applicant made reference to had been issued in the year 2017 and lapsed in 2018 as there is no evidence that the court gave any further orders. That the Application herein was therefore incompetent, bad in law, frivolous or vexatious, fatally defective and/or an abuse of the court process and the same should be dismissed and/or struck out with costs.
 11. By an order of the court of 9th November 2022, the court had directed that the application be disposed of by way of written submissions.
 12. In the Applicant's undated submissions filed on the 25th January 2023, he had framed his issue for determination as to whether the 2nd Respondent was in contempt of court orders issued on the 18th December 2017. The Applicant then relied on the definition of Contempt of court as is found in the [Black's Law Dictionary](#) 9th Edition as well as the definitions under Section 10(1) and (3) of the [Magistrate's Act](#), and Order 40 rule (3) of the [Civil Procedure Rules](#). The Applicant further relied on the decision in the case in [Econet Wireless Kenya Ltd vs. Minister of Information & Communication of Kenya & Another](#) [2005] KLR 828, to submit that via his application of the 14th December 2018, he had



- sought for and had been granted an order of temporary injunction restraining the Defendant whether by himself, his agents and or servants from trespassing on, constructing and or developing, alienating or otherwise interfering or dealing with his property being title No. 598/1/1.
13. That on the 29th January 2018, the court had issued a warning to the “Defendants” against disobeying its orders wherein it had issued order for maintenance of the *status quo* which had always been the position until the 15th June 2022 when the 2nd Respondent/Defendant prevented him (Plaintiff) from carrying out repairs on his property and had thereafter proceeded to dig trenches on the land.
 14. That although the 2nd Respondent/Defendant had been joined as a party to the suit at a later date, once joined, he was bound by orders and directions preceding thereto. That his action of the taking the law into his own hands by preventing the Applicant/Plaintiff from accessing his building was not justification whatsoever and was thus an affront to the rule of law.
 15. That without sanctions for contempt, there would be a serious threat to the rule of law and administration of justice. That the orders issued by the court for maintenance of *status quo* should be upheld by all parties including those joined after its issuance.
 16. That it was an established position that if courts were to perform their duties and functions effectively and remain true to the spirit which they are sacredly entrusted with, their dignity and authority has to be respected and protected at all costs otherwise the very cornerstone of the constitutional scheme would give way and with it would disappear the Rule of Law and a civilized life in the society. That it was for this purpose that courts were entrusted with the extraordinary power of punishing those who indulged in acts, whether inside or outside courts, which tended to undermine the courts’ authority. The Applicant sought that his application be allowed.

The 2nd Respondent’s submission

17. In opposition to the application, the 2nd Respondent also relied on the same issue raised by the Applicant for determination wherein he submitted that the court ought to satisfy itself on the elements of civil contempt as was cited in the case in [North Teta Farmers Company Limited vs. Joseph Nderitu Wanjobi](#) [2016] eKLR which had set out the four elements to be proved to make a case for civil contempt.
18. With regards to the 1st element, the 2nd Respondent submitted that the matter herein was initiated in 2017 between the Applicant and one John Kiprono Chumo. That he had been added as a party to this suit vide an amended Plaint dated 1st March 2018. That the impugned orders of the court alleged to have been disobeyed were issued on the 20th December 2017 before he was added as a party to this suit and which orders had been directed to one John Kiprono Chumo who was the only Respondent in the matter and these orders were thus not binding upon the 2nd Respondent.
19. On the 2nd element, the 2nd Respondent submitted that there was no affidavit of service on record that was indicative that the order had been served upon him bearing in mind that at the time of issuance of the said orders, he was not a party to the dispute and therefore it was not possible that he had any knowledge of the same.
20. On the 3rd element, the 2nd Respondent submission was that it was trite that the standard of proof in contempt proceedings was higher than of civil of cases as was held in the case of [Regina Butt vs. Haroon Butt & Another](#) [2016] eKLR among others.
21. The 2nd Respondent denied ever preventing the Applicant from carrying out repairs on his property, having dug trenches on the land or even having blocked the Applicant’s tenant one Nickson Marit



from accessing his shop by use of a tractor. That the said allegations had not been backed by any evidence and therefore the Applicant had not discharged his evidential burden as it was trite law that he who alleges must prove. Reference was made to Section 107 of the Evidence Act.

22. That the courts were courts of equity and those who came to equity must come with clean hands. That it was settled law that a person who approached the Court for granting relief, equitable or otherwise, was under a solemn obligation to candidly and correctly disclose all the material and important facts which have bearing on the adjudication of the issues raised in the case.
23. That the Application had been brought in clear disregard of the provisions of Order 40 Rule 6 of the Civil Procedure Rules. That the order to which the Applicant made reference to had been issued in the year 2017 and lapsed in 2018 as there is no evidence that the court had given any further orders.
24. That based on the provisions of law and authorities, the Application herein was incompetent, bad in law, frivolous or vexatious, fatally defective and/or an abuse of the court process and the same ought to be dismissed and/or struck out with costs.

Determination.

25. I have considered the Application, the law and authorities herein cited as well as the submissions by Counsel for both parties. The Black's Law Dictionary (Ninth Edition) defines contempt of Court as:-

“Conduct that defies the authority or dignity of a Court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
26. The law guiding the present Application is Order 40 Rule 3(1) of the Civil Procedure Rules which stipulates as follows:-

“In cases of disobedience, or of breach of any such terms, the Court granting an injunction may order 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 six months unless in the meantime the Court directs his release.”
27. Section 5(1) of the Judicature Act which provided that:

“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.”
28. Section 29 of the Environment and Land Court is clear to the effect 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.”
29. It is an established principle of law as was held in the case of Kristen Carla Burchell vs Barry Grant Burchell, Eastern Cape Division Case No. 364 of 2005 that in order to succeed in civil contempt proceedings, the Applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order.
30. From the sworn affidavits, and submissions by the respective parties' Counsel on record, the applicable law and the decided cases law, the following issues stand out for determination:-



- i. Whether the 2nd Respondent herein was served with or was made aware of the order of 18th December 2017.
 - ii. Whether there was any valid Court order issued by this Court on the 18th December 2017.
 - iii. Whether the 2nd Respondent is guilty of contempt of Court order issued on 18th December 2017.
31. On the first issue as to whether the 2nd Respondent herein was served with or was made aware of the order of 18th December 2017, in the case of *Kenya Tourist Development Corporation vs. Kenya National Capital Corporation & Another*, Nairobi High Court Civil Case No. 6776 of 1992, it was held that the knowledge of an order supersedes personal service. On this line of argument, it was the 2nd Respondent's submission that this matter had been initiated in 2017 between the Applicant and one John Kiprono Chumo. That he had been added as a party to this suit vide an amended Plaint dated 1st March 2018. That the impugned orders of the court alleged to have been disobeyed were issued on the 18th December 2017 before he was added as a party to this suit and which orders had been directed to one John Kiprono Chumo who was the only Respondent in the matter, thus the orders were not binding upon the 2nd Respondent. I agree with his submission and further add that no evidence had been availed that there had been any service of the impugned orders upon the 2nd Respondent and/or that he had any knowledge of the said orders herein and neither had there been any evidence that the 2nd Respondent was the 1st Respondent's agent and/or servant.
32. On the second issue for determination as to whether there were any valid orders issued by the Court on the 18th December 2017, I find that on the date in question, the 18th December 2017, the Applicant herein obtained ex-parte orders of;
- i. a temporary Injunction restraining the respondent whether by himself, his agents and/or servants from trespassing on, wasting, constructing on, alienating or otherwise interfering or dealing with the Plaintiff's property being Title No.598/1/1 within Kipkelion Township pending the hearing and determination of this application.
 - ii. The Officer Commanding Kipkelion Police Station do enforce compliance of the orders above."
33. It must be remembered that at the time the order, which I find was a valid order, was issued, there had been only one Respondent to the suit, the 1st Respondent herein, to whom the order was directed. The said order was to remain in force up to the 16th January 2018 wherein on the said date, it had been extended to the 14th February 2018 on which day there were no proceedings conducted. On the 29th January 2018 however there had been made an order for maintenance of *status quo* pertaining as at the time and a mention date was taken for the 21st March 2018. Thereafter, no extension of the interim orders was sought and/or issued.
34. The 2nd Respondent was then brought on board via an amended Plaint dated the 1st March 2018 and filed on the 20th March 2018. The alleged impugned acts according to the Applicant at paragraph (iii) were committed on 15th June 2022 by which time, there were no interim injunctive orders in force, the said orders having lapsed by operation of the law as no attempt had been made to have the court extend



them. The Court of Appeal in *Erick Kimingichi Wapang'ana & Another vs Equity Bank Limited & Another* (2015) eKLR, held as follows:-

“Order 40 Rule 6 was made in clear cognizance of the preceding Rules in that order. It therefore follows that notwithstanding the wording of any order of interlocutory injunction, the same lapses if the suit in which it was made is not determined within twelve months “unless”, as the Rule provides, for any sufficient reason the court orders otherwise. In this case, there was no subsequent order extending the injunction.”

35. It is thus important to acknowledge that the scope and purpose of the provisions of Order 40 Rule 6 of the *Civil Procedure Rules* is that it is intended to cure and/or prevent a situation where unscrupulous Applicants go to slumber after obtaining an injunction to temporize a case for as long as possible without making serious efforts to conclude it. I thus find that the 2nd Respondent is not guilty of contempt of the Court order issued on 18th December 2017 as the same was none-existent.

36. The standard of proof in cases of contempt of Court is well established. In the case of *Mutitika vs Baharini Farm Limited* [1985] KLR 229, 234 the Court of Appeal held that:

“In our view, the standard of proof in contempt proceedings must be higher than proof on the 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, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature.”

37. Contempt proceedings are of a criminal nature and involve, if proved, loss of liberty. The Applicant was therefore tasked to endeavor to prove all facts relied on by way of evidence beyond reasonable doubt. It is not like any other ordinary matter.

38. The Supreme Court of Kenya in *Republic vs. Ahmad Abolfathi Mohammed & Another* [2018] eKLR held that;

“The power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the Respondents to establish that the alleged Contemnor’s conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the Court Order.”

39. In the end, I find that the Applicant has not proved to the required standard that the 2nd Respondent as cited was in brazen disobedience of the Court order issued by this Court on 18th December 2017. I decline to grant the order sought by the Applicant and proceed to dismiss the notice of Motion dated the 16th June 2022 with costs. The 2nd Respondent is herein acquitted of the charge of being in contempt of Court.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 13TH DAY OF APRIL 2023.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

