



**Njenga v Chumba & another (Environment and Land Miscellaneous  
Application E005 of 2023) [2023] KEELC 17583 (KLR) (29 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17583 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E005 OF 2023  
DO OHUNGO, J  
MAY 29, 2023**

**BETWEEN**

**ANNA KABOI NJENGA ..... APPLICANT**

**AND**

**STEPHEN KIMTAI CHUMBA ..... 1<sup>ST</sup> RESPONDENT**

**THE LAND REGISTRAR, KAKAMEGA COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. By notice of motion dated March 9, 2023, the applicant seeks orders that this court arrests its ruling in ELCC No. E037 of 2022 (Kakamega) pending determination of this miscellaneous cause, that summons to issue to the first respondent to show cause why he should not be committed to civil jail, that the first respondent be cited for contempt of court in respect of orders issued on September 27, 2022 and October 6, 2022 or be ordered to purge the contempt and lastly, that the OCS Lumakanda to oversee the implementation of orders made.
2. The application is supported by an affidavit sworn by the applicant. She deposed that an order was made on September 27, 2022 in ELCC No. E037 of 2022 (Kakamega) restraining the first respondent from subdividing, or in any manner disposing of the parcels of land known as Kakamega/Soy/2109 and Kakamega/Soy/2110 and that counsel for the first respondent was aware of the order since he extracted it. She added that despite the order being extended on November 21, 2022 in the presence of counsel for the first respondent, the first respondent went ahead and disregarded the order by selling a portion of the suit property on January 10, 2023 and leasing the land to a third party on December 16, 2022 for a period of one year.
3. The first respondent opposed the application through a replying affidavit in which he deposed that he has not sold or leased any portion of the parcels of land known as Kakamega/Soy/2109 and Kakamega/Soy/2110.



4. I have considered the application, the affidavits, and the submissions. Prayer 1 of the application seeks an order that this court arrests its ruling in ELCC No. E037 of 2022 (Kakamega) pending determination of this miscellaneous cause. The applicant herein is the plaintiff in ELCC No. E037 of 2022 (Kakamega) and the applicant in the application whose ruling she wants arrested. No valid reason has been offered why the ruling in ELCC No. E037 of 2022 (Kakamega) which is on an application for interlocutory injunction, should await the determination of this miscellaneous cause. I am not persuaded that I should make such an order. In any case, the said prayer is overtaken by events now that this miscellaneous cause is determined through this ruling.
5. Regarding the prayer that the first respondent be cited for contempt of court, I note that this court like any other court has inherent jurisdiction to ensure that judicial authority, dignity, and the rule of law are always upheld. The Court of Appeal stated in *Woburn Estate Limited v Margaret Bashforth* [2016] eKLR as follows:

The jurisdiction of the High Court (or any other court for that matter) to punish for the violation of its orders cannot be in question. Apart from section 5 (1) of the *Judicature Act* that vests in the High Court the power, like those of the High Court of Justice in England, to punish any party who violates its orders, the court, by virtue only of being a court has inherent powers to make sure its process is not abused and its authority and dignity is upheld at all times. ...
6. The power of the court punish for contempt of court can only be exercised upon proof that there has been contempt. The Court of Appeal stated as follows in *Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 others* [2018] eKLR regarding the test for establishing contempt of court:

... It is trite that to commit a person for contempt of court, the court must be satisfied that he has willfully and deliberately disobeyed a court order that he was aware of. That is made absolutely clear by section 4 of the *Contempt of Court Act* and the ruling of the Supreme Court in Republic v. Ahmad Abolfathi Mohammed & Another ... Secondly, as this Court emphasized in Jihan Freighters Ltd v. Hardware & General Stores Ltd and in A.B. & Another v. R. B. [2016] eKLR, to sustain committal for contempt of court, the order of the court that is alleged to have been deliberately disobeyed must be clear and precise so as to leave no doubt as to what a party was supposed to do or to refrain from doing. Lastly, the standard of proof in committal proceedings is higher than proof on a balance of probabilities, though not as high as proof beyond reasonable doubt. ...
7. The order that the first respondent is accused of disobeying restrained the the first respondent from subdividing or in any manner disposing of the parcels of land known as Kakamega/Soy/2109 and Kakamega/Soy/2110. I have looked at the agreements that the applicant has annexed. None of them is in respect of Kakamega/Soy/2109 and Kakamega/Soy/2110. To that extent, the applicant has not demonstrated any wilful or deliberate disobedience of order made on 27<sup>th</sup> September 2022 on the part of the first respondent. The applicant has failed to prove her allegations of contempt to the requisite standard.
8. I find no merit in Notice of Motion dated 9<sup>th</sup> March 2023 and I therefore dismiss it with costs to the first respondent.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 29<sup>TH</sup> DAY OF MAY 2023.**

**D. O. OHUNGO**

**JUDGE**

Delivered in open court in the presence of:



Mr Minishi for the applicant

Mr Shivega for the first respondent

No appearance for the second respondent

Court Assistant: E. Juma

