



Gikonyo & 15 others v National Land Commission & 9 others; Chief Lands Registrar & another (Interested Parties); Gichia (Proposed Interested Party) (Environment & Land Petition 9 of 2019) [2023] KEELC 18236 (KLR) (22 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18236 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION 9 OF 2019**

**AA OMOLLO, J
JUNE 22, 2023**

BETWEEN

PETER MARIRA GIKONYO & 15 OTHERS PETITIONER

AND

NATIONAL LAND COMMISSION & 9 OTHERS RESPONDENT

AND

CHIEF LANDS REGISTRAR INTERESTED PARTY

**NAIROBI CITY COUNTY (SUED ON ITS OWN BEHALF AND AS SUCCESSOR
IN TITLE TO NAIROBI CITY COUNTY) INTERESTED PARTY**

AND

ANDREW GATU GICHIA PROPOSED INTERESTED PARTY

RULING

1. The Petitioners filed an application for contempt dated April 29, 2020 and a ruling on the same was issued on December 10, 2020 finding the 12th and 13th Respondents in contempt of the court orders issued on 20th August and October 29, 2019 and ordered that they appear before court to show cause why they should not be committed to civil jail.
2. The 12th Respondent swore an affidavit dated March 10, 2023 in response to Notice to Show Cause. The 12th Respondent stated that he is not a member, employee, agent or representative of Kiambu Dandora Farmers Company Limited and that he was not aware of the existence and pendency of the suit, specifically the application dated April 29, 2020 and was not aware how to respond to the same.



3. The 12th Respondent stated that the court found him in contempt because of the misleading information placed before it and that he does not feature in the photographs produced to place him at the scene of the alleged contempt or showing his involvement in the alleged contempt and has no interest in the suit property. The 12th Respondent stated that he has a lot of respect to the court and has not even thought of disobeying the Court's Orders.
4. The 12th Respondent contended that he hired an investigator by the name Nduku Investigations Bureau who found that the alleged container is at Nairobi City County Yard at Dagoretti Corner Nairobi and has asked the Plaintiff/Applicant to assist in identifying the container at the said Yard and follow up on how it reached there and requested the Plaintiff to cooperate.
5. The 12th Respondent deposed that having taken the necessary steps on establishing who took the alleged container from the suit premises, he will be punished for a wrong committed by another person and in any event, compensation will be sufficiently adequate. He pleaded with the court to have mercy on him as he had no connection with the activities which led to his being cited for contempt.
6. The 12th Respondent averred that he has no interest in the Plaintiff's property as his property is distinct from what they are claiming and he does not know majority of the Respondents herein therefore could not coordinate any action together with them and that he is not the one currently utilizing the suit premises and has never been involved in erecting any fence on the suit premises.
7. On March 22, 2023, the 12th Respondent appeared in court and contradicted his averments in the affidavit, stating that he is a member of Kiambu Dandora Farmers and has a plot in the suit property. He continued that he attended a meeting regarding the security of the suit property but does not know about the Petitioner's letter. On cross examination on one hand, he stated that he has not committed to return the Container back and has not committed to rebuild the demolished walls. On the other hand, he said that he is remorseful and would be willing to bear the costs of returning the container and that he does not have any interest in the suit property.
8. The 13th Respondent swore an affidavit on April 23, 2023 in mitigation, deposing that is not a member of Kiambu Dandora Farmers Company Ltd, nor is he an employee or agent. That he was not aware of this suit since he had not been served the pleadings, the various orders and the application dated April 29, 2020 and that he only became aware of the suit on 10/02/201 when he received a phone call from the Advocate of the 8th Respondent informing him that he was in contempt.
9. The 13th Respondent stated that even after the ruling was issued by this court on December 10, 2020, the Petitioner never sought to serve him personally with the Notice to Show Cause that required him to attend court as is required. He stated that the findings of the court in respect to contempt as against him was only based on the fact that he did not file a response to the application dated April 29, 2020 and therefore was condemned without a fair hearing.
10. The 13th Respondent further stated that he is the registered owner of Nairobi Block 166/385,166/384 and 166/386 having purchased them from the 8th Defendant/Respondent after subdivision of LR 11379/3 and that upon issuance of the requisite approvals, the NLC issued him with allotment letters on behalf of the 8th Respondent. That upon issuance of title deeds, he proceeded to put up apartments which were concluded in 2017 and are now leased to 3rd parties for commercial and residential purposes. He avers that he has no interest in the suit property as his plots do not fall within it.
11. The 13th Respondent appeared in court on April 25, 2023 and reiterated that he only learnt of the order after conviction and that he has no association with Kiambu Dandora Association except for buying a plot from them in 2014. He stated that he does not know where the container is but would



join the 12th Respondent to find a way on how to have it returned. He prayed for forgiveness and stated that he would cooperate and that he had no interest in the suit property.

12. On cross examination the 13th Respondent confirmed that he had not filed an appeal against the conviction and that he had previously been found in contempt in ELC 104 of 2018, an ongoing case where he is yet to give his evidence. He also stated that the container is at the Nairobi City County depot and that there is no evidence to show that he is the one who took it there.
13. The 12th and 13th Respondents were already found in contempt of the court orders. The issue for determination for in this court is the sentence to be meted out as punishment for the disobedience. In their mitigation, the 12th and 13th Respondents stated that they were not aware of the application and the orders that were issued. The 12th Respondent further stated that he had made attempts to establish the whereabouts of the alleged container despite not being involved in its disappearance from the suit premises. Both Respondents stated that they obey court orders and pleaded with the court to have mercy on them.
14. Dealing with the question of contempt in *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, Ibrahim, J (as he then was), underscored the importance of obeying court orders, stating:

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.” (emphasis)

15. In *TN Gadavarma Thiru Mulpad v Ashok Kbot And Anor* [2006] 5 SCC, the Supreme Court of India also emphasized on the dangers of disobeying Court orders, thus:

“Disobedience of this Court’s order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court’s orders are to be followed and complied with.”

16. This court has the power and obligation to safeguard the peaceful and development of society and the rule of law. In *Kenya Human Rights Commission v Attorney General & another* [2018] eKLR the Court stated that it has inherent powers to enforce its orders under Article 159 of the *Constitution* as follows:

“57. Article 159 of the *constitution* recognizes the judicial authority of courts and tribunals established under the *constitution*. Courts and tribunals exercise this authority on behalf of the people. The decisions courts make are for and on behalf of the people and for that reason, they must not only be respected and obeyed but must also be complied with in order to enhance public confidence



in the judiciary which is vital for the preservation of our constitutional democracy. The judiciary acts only in accordance with the *constitution* and the law (Article 160) and exercises its judicial authority through its judgments decrees orders and or directions to check government power, keep it within its constitutional stretch hold the legislature and executive to account thereby secure the rule of law, administration of justice and protection of human rights. For that reason, the authority of the courts and dignity of their processes are maintained when their court orders are obeyed and respected thus courts become effective in the discharge of their constitutional mandate.”

17. In *Nthabiseng Pheko v Ekurhuleni Metropolitan Municipality & another* CCT 19/11(75/2015). Nkabinde, j observed that: -

“The rule of law, a foundational value of the constitution , requires that the dignity and authority of the courts be upheld. This is crucial, as the capacity of courts to carry out their functions depends upon it. As the constitution commands, orders and decisions issued by a court bind all persons to whom and organs of state to which they apply, and no person or organ of state may interfere in any matter, with the functioning of the courts. It follows from this that disobedience towards courts orders or decisions risks rendering our courts impotent and judicial authority a mere mockery. The effectiveness of court orders or decisions is substantially determined by the assurance that they will be enforced.”

18. The contemnors already knew where the container was but had not returned it as a show of intent of purging the contempt. Whether they were responsible for carting it away or not is not in issue for determination. Secondly, whether they are members or otherwise of Kiambu Dandora Ltd does not have any bearing on the sentencing as this Court was not re-hearing the contempt application.
19. This court should therefore punish the 12th and 13th Respondents for contempt to insulate its processes for purposes of compliance so that the rule of law and administration of justice are not undermined. Else, the authority of the court is left helpless and its decisions would mean nothing. This ultimately erodes public confidence in the courts; endangers the rule of law, administration of justice and more importantly, development of society.
20. The 12th and 13th Respondents stand to lose their liberty due to the contempt conviction if subjected to civil jail. It is noteworthy that they appeared before this court and pleaded for mercy explaining as to why they failed to obey the court orders issued. Their contempt should not, however, be taken lightly.
21. The Indian Supreme Court again stated in *Re: Vinay Chandra Mishra* [(1995) 2 SCC584], that:

“The judiciary has a special and additional duty to perform, viz, to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. Dignity and authority of the court has to be respected and protected at all costs.”



22. The Court is granted power to penalize for contempt under article 159 already quoted above, section 63 (e) of the Civil Procedure Act and section 29 of the Environment and Land Act. Section 63 (e) states thus

“In order to meet the ends of justice from being defeated, the court may if it is so prescribed make such interlocutory order as may appear to the court to be just and convenient.”

Section 29 of ELCA provides, “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.”

23. I have taken into consideration the plea for mercy by the 12th and 13th Respondents. However, they shall be punished that there is respect for the rule of law. The 12th and 13th Respondents are sentenced to pay a fine of Kenya Shillings Two Hundred Thousand each and in default they be committed to civil jail for a period of Sixty (60) days. They are further directed that upon payment of the fine or serving of the jail term, they shall cause to be returned at their expense the Petitioners container within 14 days which container they alluded is deposited at the Nairobi City County yard.

RULING DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF JUNE 2023

A. OMOLLO

JUDGE

In the Presence of

Murunga adv for 12th Respondent

Awandu adv for the 13th Respondent

Midenga adv for the Petitioners

