



**Kamakil v Korir & another (Environment & Land Case
E018 of 2024) [2025] KEELC 3248 (KLR) (19 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 3248 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE E018 OF 2024
FO NYAGAKA, J
MARCH 19, 2025**

BETWEEN

ABRAHAM MARIACH KAMAKIL PLAINTIFF

AND

ELIJAH KIPTANUI KORIR 1ST DEFENDANT

DINAH JEBET SANG 2ND DEFENDANT

RULING

1. This ruling is in respect of the 2nd of two applications coming hot on heels of the other in this matter, the first application being by the 1st Defendant and its determination has been made in another ruling. This one is dated 21st June, 2024. It seeks the following orders:
 1. ...spent.
 2. That this Honourable court find the 1st Defendant/Respondent in contempt of the court orders dated 8th May, 2024.
 3. That this Honourable court orders the 1st Defendant/Respondent to purge the contempt.
 4. That upon granting prayer 2 above, this Honourable court be pleased to commit the 1st Defendant/Respondent to civil jail and/or order him to pay a fine to the Honourable court.
 5. Cost be provided for.
2. The Application was based on grounds set out in the body, and supported by the Affidavit of Abraham Mariach Kamakil, the Plaintiff herein. It is sworn on 21st June 2024.
3. Briefly, the Plaintiff deposed that this court on 8th May, 2024, ordered that the status quo of the suit land be maintained pending hearing of the suit. He stated that the status quo was that he was the one



in occupation of the suit land. He further stated that the Defendants were served with the order and were thus aware of the same. He added that the 1st Defendant with full knowledge of the court order, entered the suit land and constructed a semi-permanent structure. That he also brought in his family members to the suit land. He stated that his advocates reached out to the 1st Defendant's advocates, informing them to advise their client to purge contempt. He stated that the 1st Defendant's actions are a show of disdain for court orders.

Response

4. The 1st Defendant filed his replying affidavit sworn on 19th July, 2024, where he averred that the court on 8th May, 2024, issued orders on occupation of the suit land based on the information by the Area Assistant Chief. He further averred that it turned out that the assistant chief misled the court on the status of plot 549. He deposed that he was on record confirming that he would remove the fences erected on the suit land which he did. He added that his employees have been on the suit land since 2023 and that there was no structure erected after issuance of the court order. He swore further that the said structure had been put up in 2023. He averred that he adhered to the directions by the court.

Plaintiff's Submissions

5. Learned counsel identified three issues for determination in regard to the instant issue. The first issue was whether the 1st Defendant is in contempt of the orders dated 8th May, 2024. He relied on the case of Samuel M.N Mwera & Others V National Land Commission & 2 Others [202] eKLR, which provided three key elements that need to be met for contempt. He submits that the terms of the order on status quo were clear and unambiguous and that the Plaintiff was to remain in occupation of the suit land. Secondly, the 1st Defendant had knowledge of the terms of the order since he was duly served with the same and an affidavit of service was on record. The final element was that the 1st Defendant acted in breach of the terms of the order, having entered and erected a fence and a semi-permanent structure on the suit land. He added that the 1st Defendant also brought in his family members. Counsel cited the case in Nairobi Civil Appeal No. 33 of 2012, Shimmers Plaza Limited V National Bank of Kenya Limited [2015] eKLR. He submits that the 1st Defendant was therefore in breach of the status quo orders issued on 8th May, 2024.
6. The second issue was whether this honourable court should order the 1st Defendant to purge the contempt. He submits in the affirmative and urged the court to order that the 1st Defendant take down the fence, demolish the temporary structure and that he move his family members from the suit land. He cited the case of St. Mary Academy Limited & Another V Grace Njeri Mukoraa & another; Yvonne Jeruto & Another (Contemnors) [2021] eKLR which cited with approval the case of Directline Assurance Co. Ltd V Jamii Bora Bank Ltd & 5 Others [2015] eKLR. He also submits that the 1st Defendant should also be purged for disobedience.
7. In conclusion, he submits that the 1st Defendant was in contempt of the court order dated 8th May, 2024, and urged the court to allow the application with costs.

1st Defendant's Submissions

8. Counsel for the 1st Defendant filed his submissions dated 18th November, 2024, in respect of the two applications. He submitted that the area chief and the assistant chief were categorical on who was in possession of the suit land as at 8th May, 2024 when the order was issued.



Analysis and Determination

9. This court has considered the application. It is of the view that the main issue for determination is whether the application is merited. About it, the 1st Defendant submitted that the Plaintiff had misled the court through the report by the assistant chief on 8th May, 2024, the issue of contempt would not be applicable. Furthermore, the Area Assistant Chief confirmed, from the report dated 14th May, 2024, that the semi-permanent house fell outside the disputed land and also confirmed that there was nothing new done on the suit land after the orders of 8th May, 2024.
10. About obedience to court orders, courts in our legal system have said much about them. In the Kenya Human Rights Commission v Attorney General & another [2018] eKLR, the Court emphasized as follows:

“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.”
11. Elsewhere, 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.”
12. In Canada, the Court was more emphatic than any other in other jurisdictions. It did so in the case of Canadian Metal Co. Ltd v Canadian Broadcasting Corp(N0. 2) [1975] 48 D.LR(30), where it stated that:

“To allow court orders to be disobeyed would be to tread the road toward anarchy. If orders of the court can be treated with disrespect, the whole administration of justice is brought into scorn... if the remedies that the courts grant to correct... wrong can be ignored, then there will be nothing left for each person but to take the law into his own hands. Loss of respect for the courts will quickly result into the destruction of our society.” Courts therefore punish for contempt to insulate its processes for purposes of compliance so that the rule of law and administration of justice are not undermined. Without this power or where it is limited or



diminished, 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. That is why the court stated in *Carey v Laiken* [2015] SCC 17 that; “Contempt of court rests on the power of the court to uphold its dignity and process. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect.”

13. Flowing from the above, it is not in doubt that courts will punish for contempt of court to uphold their dignity and the rule of law. The question regarding the instant matter is whether the application is merited. One thing is clear: The Plaintiff misled the Court through his agents, who misled the Area Assistant Chief. He wishes the court to punish the 1st Defendant for holding an incorrect position. This Court finds so because, in view of the above, it is now clear that dispute that the Assistant Chief misled the court into issuing its orders dated 8th May, 2024 and with that, it would not be in the interest of justice to punish find that a party has acted in a manner inconsistent with the orders because he remained in the position he was before the orders were issued. Clearly, to punish him for what he has not done, although the orders state something different from his current position, would be unfair. The upshot of the foregoing is that the application dated 21st June, 2024, is not merited and is dismissed with costs.

14. It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM ON THIS 19TH DAY OF MARCH, 2025.

HON. DR. *IUR* FRED NYAGAKA

JUDGE

In the presence of:

Ambutsi Advocate for the Plaintiff

Ms. Nafula Advocate holding brief for Serebe for the 1st Defendant

