



M'mboga & another v Kagumba; Autogari Kenya Limited (Intended Interested Party) (Environment and Land Miscellaneous Application E080 of 2022) [2023] KEELC 19284 (KLR) (27 July 2023) (Ruling)

Neutral citation: [2023] KEELC 19284 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E080 OF 2022
LN MBUGUA, J
JULY 27, 2023**

BETWEEN

IAN GONJI M'MBOGA 1ST APPLICANT

MEGERIA KIBUCHI MAGERIA 2ND APPLICANT

AND

BENJAMIN KIMERIA KAGUMBA RESPONDENT

AND

AUTOGARI KENYA LIMITED INTENDED INTERESTED PARTY

RULING

1. This ruling concerns the notice to show cause issued to the respondent herein to explain why he should not be punished for contempt having been found to be in contempt of court orders vide the ruling delivered by this court on October 27, 2022.
2. When the respondent appeared before this court on July 5, 2023, he apologized and pleaded for mercy. He told the court that the order to release items to his former tenants who are the applicants herein came from BPRT on January 6, 2022 and that he fully purged the contempt. He pointed out that on January 19, 2023, he released 1 motor vehicle registration number KAD 686D to the respondent and that they collected all their items the preceding Friday.
3. In response, the 1st applicant stated that they were able to collect some items including some structures which are in bad shape consisting of, 1 spray booth and 1 car machine. They didn't get all their goods as some items like tools were missing while others were vandalized. He confirmed that it was the "last Friday" that they collected the goods.



4. I find that the contemnor has admitted to being aware of the tribunal order dated January 6, 2022. He was found to be in contempt vide a ruling of this court dated October 27, 2022. He apparently released the motor vehicle on January 19, 2023 while the other goods were released on the Friday before the court date of July 5, 2023. That Friday falls on June 30, 2023.
5. The explanation proffered by the contemnor is clearly wanting in substance. Even after the court's ruling of October 27, 2022, the contemnor did not move with haste to purge the contempt.
6. The court will not go into details of what was vandalized or missing since this is not a substantive suit. The bottom line is that the respondent did not obey the tribunal orders.
7. The provisions of section 29 of the *Environment and Land Court Act* provides 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”.
8. Guided by the above provision of law, I hereby sentence the respondent to pay a fine of Ksh 200 000, in default to serve 6 months imprisonment.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JULY, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Chawla for Respondent

Ambala for the two Applicants

Contemnor

Court Assistant: Eddel

