



**Kalani v Muthusi (Environment & Land Case 149 of 2017)
[2023] KEELC 19239 (KLR) (26 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19239 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 149 OF 2017**

**A NYUKURI, J
JULY 26, 2023**

BETWEEN

DAVID KIMONYE KALANI PLAINTIFF

AND

MAILU MUTHUSI DEFENDANT

RULING

1. The application before this court is dated October 11, 2022. The Applicant sought the following prayers;
 - a. Spent
 - b. This honourable court finds the Defendant in contempt of the judgement and Decree issued by this honourable court on the October 4, 2019 and January 20, 2021.
 - c. This Honourable court be pleased to commit the defendant to civil jail for being in contempt of court orders issued on October 4, 2019 and January 20, 2021.
 - d. This Honourable court be pleased to issue any further punitive orders in respect of the said contempt and disobedience by the Defendant as may be necessary geared towards meeting the ends of justice and towards protecting the dignity and authority of this Honourable Court.
 - e. The costs of the Application will be borne by the Defendant.
2. The application is based on the grounds on the face of it and the supporting Affidavit of one David Kimonye Kalani sworn and dated October 11, 2022. The Deponent stated that on the October 14, 2019, this honourable court delivered judgment and a Decree was issued on January 20, 2021 where the court inter alia ordered the Defendant, his agents, sons and daughters and other family members acting under his directions restrained from trespassing on land known as Mavoko Town Block 3/9282 (suit property). He further deposed that upon service of the said judgement and Decree, the Defendant



failed and/or ignored the said orders necessitating filing of the Application dated August 25, 2021 wherein he sought and obtained orders for provision of security for the forceful eviction of the Defendant.

3. The Applicant further averred that, service of orders was made on the defendants and the OCS Mwanga Police Station supervised his eviction. That despite service of the said orders upon him, the Respondent in blatant disobedience went back and trespassed into the suit parcel of land hampering the plaintiff's quiet enjoyment and usage of the land and became extremely violent leading to the Applicant fleeing from the land. He then deposed to have reported the trespass to the OCS Mwanga Police Station, who in turn prepared a report confirming the trespass after carrying out investigations and attaching photos evidencing renewed construction of semi-permanent structures on the suit land. He stated that the report was duly filed in court and dated September 1, 2022.
4. The Applicant further stated that the aforesaid conduct by the Defendant amounts to contempt and wanton disobedience of the said orders of this Honourable Court and appropriate punishment ought to be meted out on the Defendant. Further, that the wilful and malicious culture of disobeying court orders and decisions has reached very high and intolerable levels in Kenya and the courts must now exercise their constitutional and statutory discretion and power of punishing contemnors.
5. He further deposed that court orders are not made in vain and that they are meant to be complied with and therefore, if for any reason a party has difficulty in complying with court orders, the honourable thing to do is to come back to court and explain the difficulties faced.
6. It was the Applicant's averment that it is essential to maintain the rule of law and order, that the authority and the dignity of our courts are upheld at all times and courts should not condone deliberate disobedience of its orders and should not shy away from their responsibility to deal firmly with proved contemnors. He also deposed that the orders sought herein as per the plaintiff ought to be granted in the preservation and protection of the authority and dignity of the Court as envisioned in the *Constitution of Kenya, 2010*. He also prayed that the court does give effect to the overriding objective of facilitating the just, expeditious, proportionate and affordable resolution of disputes.
7. There was no response to the Application, despite the Respondent's indication to court of his intention to file a Replying Affidavit. Further, despite the court's directions issued on 2nd November 2022 that the Application be canvassed by way of written submissions, there are no submissions from either party on record.

Analysis and Determination

8. The court has considered the Application and the supporting Affidavit together with the evidence by the Applicant. The Application being unopposed, the only issue that the court needs to determine is whether the Defendant/Respondent is in contempt of the judgment and decree of this court.
9. The power of this court to punish for contempt is provided for in section 5 of the *Judicature Act* which provides as follows;

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.



10. Contempt of court is the conduct or action that defies or disrespects the authority of court. *Black's Law Dictionary* 9th Edition, defines contempt as:

The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.

11. Obedience of court orders is important and necessary in the administration of justice, as disobedience of court orders erode the rule of law, which is the cornerstone of a democratic society. Therefore it is the duty of the court to punish proved contemnors.

12. In the case of *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, the court emphasized the importance of obeying court orders, as follows;

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.

13. Similarly, in the case of *Gadavarman Thiru Mulpad v Ashok Khot and another* [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."

14. Contempt of court proceedings are of a special nature since the consequences thereof may impact on the rights of the contemnor as their liberty is at stake. Therefore the standard of proof of contempt is higher than that of the balance of probability but below the standard required in criminal cases of beyond reasonable doubt.

15. To prove contempt of a court order, the Applicant must show that there exists a court order with clear unambiguous terms; that the Respondent was aware of the court order; and that they deliberately breached the court order.

16. In the case of *Cecil Miller v. Jackson Njeru and another* (2017) eKLR the court outlined the ingredients for contempt of court orders as:-

- a. the terms of the order/or injunction or undertaking, were clear and unambiguous and were binding on the Defendants;
- b. the defendant has knowledge of or proper notice of the terms of the order;



- c. the defendant has acted in breach of terms of the order and
- d. the defendant's conduct was deliberate.
17. In the instant matter, the Applicant states that by the court's judgment dated October 14, 2019, and the subsequent decree issued on January 20, 2021, the court issued eviction orders against the Defendant and his proxies. That by application dated July 25, 2021 the court issued orders to OCS Mwanga Police Station to provide security for the eviction of the defendant. That indeed the Defendant was evicted on July 28, 2022 but later on August 14, 2022, the Defendant returned on the suit property and put up semipermanent structures, became violent against the Plaintiff forcing the Plaintiff out of his land. I have considered the annexures attached to the application and one of them is the decree of this court, the order of the court made on 14th July 2021, a report by IP Moses Thurania the OCPD Mwanga Police Post and photographs showing the demolition of semi permanent structures on the suit property and also fresh semi permanent structures on the suit property. It is therefore clear that the Defendant has returned to the suit property after he was evicted. The decree is clear that the Defendant was evicted from the suit property. His return on the property after eviction is therefore in contempt of the decree.
18. In the premises, I find and hold that the Defendant is in contempt of the judgment and decree of this court. The Defendant is ordered to appear before court for mitigation on September 25, 2023 before sentencing.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 26TH DAY OF JULY, 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the Presence of;

No appearance for the Plaintiff

No appearance for the Defendant

Abdisalam – Court Assistant

