



REPUBLIC OF KENYA



KENYA LAW
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Silanga Park Limited v Njuguna & 2 others (Environment & Land Case E219 of 2022) [2023] KEELC 19357 (KLR) (30 August 2023) (Ruling)

Neutral citation: [2023] KEELC 19357 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E219 OF 2022
EK WABWOTO, J
AUGUST 30, 2023**

BETWEEN

SILANGA PARK LIMITED PLAINTIFF

AND

THOMAS WAHOME NJUGUNA 1ST DEFENDANT

GRACE MUTHONI NJUGUNA 2ND DEFENDANT

MARY NJERI NJUGUNA 3RD DEFENDANT

RULING

1. This ruling is in respect to a Notice of Motion application filed by the Plaintiff on June 14, 2023. The application was accompanied by a supporting affidavit sworn by Kasyoka Mwanzia. The Application sought the following orders:
 - i. That summons be issued against the Respondents to appear before the Court and show cause why they should not be committed to civil jail for such term as the court may deem just.
 - ii. That the Respondents be cited for contempt of court and be committed to civil jail for a term of six (6) months until they purge their contempt and comply with the orders of this Honourable Court issued on February 27, 2023 and/or they be ordered to purge the contempt on terms that this Honourable Court deems fit.
 - iii. That in lieu of the second prayer the Respondents be cited for Contempt of court and be fined a sum of at least Kshs 200,000/- and that the court does make any and such orders for purposes of enforcing the orders issued by this court.



- iv. That the costs of this application be in the cause
2. The Application was premised inter alia on the grounds that the Respondents had deliberately failed to comply with the orders issued by this court on February 27, 2023.
 3. Pursuant to the directions issued by this court on June 20, 2023, it was directed that the application be canvassed by way of written submissions. The Plaintiff was granted 14 days to file its submissions and the Defendants were granted 14 days to equally file their written submissions. At the time of writing the ruling neither parties had filed submissions, therefore, the Court will proceed to make its determination on the evidence placed before it.
 4. I have considered the application, supporting affidavit and the evidence filed. In my view, the issue that arises for determination is whether this court should proceed to cite the Defendants for contempt of its orders issued on February 27, 2023.
 5. Contempt of court has been defined as conduct which interferes with the administration of justice or impedes or perverts the course of justice. In specific, civil contempt consists of a failure to comply with a judgment or order of a court or breach of an undertaking of court. (See Osborne's Concise Law Dictionary). In the case of *Sam Nyamweya & Others v Kenya Premier League Ltd and Others* [2015] eKLR it was stated as follows:

“Contempt of court is constituted by conduct that denotes willful defiance of or disrespect towards the court or that willfully challenges or affronts the authority of the court or the supremacy of the law, whether in civil or criminal proceedings.” [Emphasis mine]
 6. In *North Tetu Farmers Co. Ltd v Joseph Nderitu Wanjohi* [2016] eKLR the Court discussed the threshold that would constitute contempt as follows:

“There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:

 - (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the Defendant;
 - (b) the defendant had knowledge of or proper notice of the terms of the order;
 - (c) the defendant has acted in breach of the terms of the order; and
 - (d) the defendants conduct was deliberate.” [Emphasis mine]
 7. In this instance, the Plaintiff averred that the Respondents have at all times known of the orders issued against them. Paragraph 4, 5 and 6 of the supporting affidavit states:

“That at all material times the Respondents have always been aware of the orders that were issued by this Honourable Court.

That despite the court orders the Respondents have wilfully failed and/or refused to cease their construction and continue to put up structures on the suit land contrary to the directions of this Honourable court. (Annexed hereto and marked KM1 are photos showing ongoing construction).



That, additionally the Respondents continue to occupy the suit property contrary to the prohibition orders issued by this Honourable court.”

8. Perusal of the court proceedings confirm that counsel for the Respondents attended court on 27th February 2023 when the interim injunction orders were issued. It is therefore evident that the Respondents had sight and knowledge of the orders issued by the court and no explanation has been given as to the said noncompliance. With regard to knowledge of court orders vis a vie personal service, I wish to refer to the case of *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR, the learned Judges held;

“Would the knowledge of the judgment or order by the advocate of the alleged contemnor suffice for contempt proceedings” We hold the view that it does. This is more so in a case such as this one where the advocate was in Court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in court on instructions of a party, then it behooves him/her to report back to the client all that transpired in court that has a bearing on the client’s case.”

This is the position in other jurisdictions within and outside the commonwealth. In addressing the issue whether service of a judgment or order on the solicitor for the Ministers is sufficient knowledge of the order on their part to found liability in contempt; the Supreme Court of Canada in *Bhatnager v Canada (Minister of Employment and Immigration)*, [1990] 2 S.C.R. 217 at p. 226, LJ Sopinka, held that:- “In my opinion, a finding of knowledge on the part of the client may in some circumstances be inferred from the fact that the solicitor was informed....”.

9. In *Basil Criticos v Attorney General and 8 Others* [2012] eKLR the learned Judge pronounced himself as follows: -

“...the law has changed and as it stands today knowledge supersedes personal service.... where a party clearly acts and shows that he had knowledge of a Court Order; the strict requirement that personal service must be proved is rendered unnecessary”

10. Consequently, the Plaintiff’s application dated June 14, 2023 is hereby determined as follows:
- i. Summons are hereby issued against the 1st, 2nd and 3rd Defendants/Respondents to appear before court either physically or virtually to show cause why they should not be committed to civil jail.
 - ii. Each party to bear own costs of the application.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF AUGUST 2023.

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Maina for the Plaintiff/Applicant.

N/A for the Defendant/Respondents.



Court Assistant; Caroline Nafuna.

