



**Kungu v Kungu (Environment & Land Case 11 of 2023)
[2023] KEELC 20122 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20122 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND CASE 11 OF 2023
LN GACHERU, J
SEPTEMBER 28, 2023**

BETWEEN

SAMUEL NDUNGU KUNGU PLAINTIFF

AND

VERONICA WAITHERA KUNGU DEFENDANT

RULING

1. The Plaintiff/ Applicant herein Samuel Ndungu Kungu, filed this Notice of Motion Application, dated 8th December 2022, and sought for the following orders;
 1. That the Court do cite the Defendant/Respondent for the contempt of the Court's Judgement and decree of this Court given on 10th November 2016, and punish her by imprisonment in civil jail for such a period that the honourable Court shall deem fit and/or impose such fine to be paid by the contemnor as it shall deem fit.
 2. That the Defendant/Respondent be compelled to purge her contempt of the honourable Court's judgement and decree given on 10th November 2016, by removing at her own costs the permanent construction put on the suit land LOC 4/NAARO/1557, by her agent John Mungai, with her knowledge, permission and acquiescence, by exhuming the remains of one Kungu, a male new-born son of Lucy Muthoni Kungu, who was buried on the suit land and by registering the suit land LOC4/NAARO/1557, in accordance with the Judgement in Thika CMs Succession Cause No. 431 of 2009, all the a foregoing within such a period of time as this Court shall directs.
 3. That the Defendant/Respondent be condemned to pay costs of this Application.
2. This Application is premised on the following grounds;



- a. That after the hearing of this matter on merit, a judgement was entered on 10th November 2016.
 - b. That in the said Judgment and Decree, the Respondent was permanently restrained by herself, agents and/or employees, servants and or agents from disposing, selling, transferring or in any way from disposing land parcel No. LOC 4/NAARO/1557, whose reversion rests with the Applicant.
 - c. That by dint of the said Judgment and Decree, an order was issued preventing the Respondent from conducting any dealings on the suit land to the detriment of the Applicant's reversionary interest.
 - d. Thereafter, an order was made compelling the Respondent to effect registration of the suit land LOC 4/NAARO/1557, in accordance with the judgement in THIKA Succession Cause No 431 of 2009.
 - e. That the Respondent was personally served with the said Judgement and Decree, she has deliberately defied or flouted the terms of the said Judgement, which is a calculated scheme to defeat the Applicant's reversionary interest in the suit land.
 - f. That the Respondent's action is malafide and is geared to set claims to the suit land by other third parties in derogation of the Applicant's reversionary interest.
 - g. That the Respondent has failed to register the suit land in accordance with the judgement in Thika succession Cause and has registered as an absolute proprietor, she has allowed one John Mungai to build on the suit land and also allowed Lucy Muthoni Kungu to bury her new born child on the suit land, which burial was conducted in the cover of darkness.
 - h. That it is in the interest of justice and fairness that the orders sought herein be granted.
3. The Application is also supported by the Supporting Affidavit of Samuel Ndungu Kungu, the Applicant herein. He reiterated the contents of the grounds in support of the Application and further averred that the Respondent in blatant disobedience of the Judgement of the Court registered her share of the suit land as LOC 4/NAARO/1557, in her name absolutely and set about to sell the land and thus necessitated this suit. That in defiance of the judgement of the Court, the Respondent has necessitated her step son grandson one John Mungai, to commence construction of a permanent house on the suit land. Further, that on 20th July 2022, the Respondent permitted her step granddaughter, one Lucy Muthoni Kungu to bury her new born child on the suit land, which burial was conducted at night and he reported the matter to the area chief; that the conduct of the Respondent is a deliberate and a calculated move to unjustly claim the suit land by the Respondent and her step grandchildren and/or third parties to defeat the Applicant's reversionary interest in the suit land. Further that her actions are geared towards setting future disputes over the suit property, which suit has already been conclusively determined.
4. The Application is resisted by the Respondent herein Veronica Waithera Kungu, vide her Replying Affidavit sworn on 4th July 2023, wherein she averred that the instant Application is a witch hunt which is meant to deny her peaceful stay on her parcel of land being LOC 4/NAARO/1557, which parcel of land she has a life interest. That the Decree of the Court was clear that she was restrained from selling, disposing, transferring and alienating and/or interfering with the suit land and or Applicant's reversionary interest. Further, that the said decree has been explained to her, and it did not bar her from living on the suit land, or building up a good house for herself in her sunset years. She also averred



- that she lives in a dilapidated house, and that her relatives have now assisted her to put up a modern house in her sunset years since she is approaching 80years old.
5. It was her contention that she was no way in contempt of the Court orders requiring her to pay any fine or be committed to civil jail. She also contented that the mere fact that she has a life interest over the suit property did not mean that she has to live like a destitute, without a good house as the Applicant would want the Court to believe. It was her further contention that she should be left to enjoy her sunset years peacefully, which is her right as a life interest holder.
 6. The Respondent also deposed that she depends on the Applicant's step brother's children to help and assist her feed, cloth and medicate her, since she is ailing and she must therefore depends on third parties to assist her. That the Application herein does not meet the threshold for contempt of Court and she urged the Court to dismiss the instant application with costs and she be allowed to live peacefully on her parcel of land.
 7. The Applicant filed a further Affidavit sworn on 7th July 2023, and averred that the Respondent totally evaded to respond to the issue of registration of her interest in the suit land as absolute, instead of life interest with reversion to the Applicant as per the Judgement of the Court. Further that there was a Decree of the Court in Nyeri ELC No. 236 Of 2013, which the Respondent has failed to comply with. Therefore, it is clear that the Respondent has no intention of complying with the Court order by registering the suit land as- per the judgement of succession Court in Thika Succ Cause No, 431 Of 2009, and further judgement of the Court in Nyeri ELC.
 8. Further that by permitting other parties on the suit land, the Respondent has been asserting absolute title and thus being in contempt of the Court orders. He contended that the Respondent lives on a different parcel of land being LOC 4/NAARO/621, and even after the Judgement in Thika Succ 431 of 2009, she has never attempted to occupy the suit land. Further that she does not live in a dilapidated house as averred by herself. It was his claim that there is a conspiracy between the Respondent and the children of his deceased step brother to pass the suit land to them, and thus the reasons why she has allowed John Mungai to construct a house on the suit land, and Lucy Muthoni Kungu, to bury her new born child thereon. He also contended that if the Respondent was genuine, she could have moved into the suit land and allowed her step grandchildren occupy the other parcel of land, LOC 4/ NAARO/621. Therefore, the Respondent has not come to Court in good faith or with clean hands.
 9. The application was canvassed through written submissions.
 10. The Applicant through Nyambura Njuguna & Co Advocates filed his submissions dated 29th June 2023, and submitted that the Respondent is indeed in contempt of Court orders.
 11. The applicant further submitted that the Respondent was personally served with the judgement and decree of the Court and as prove of service and knowledge of the same, she used the judgement and decree issued in Nyeri ELC 236 of 2013, as her evidence in Kandara PM ELC No. 2 of 2021. It was further submitted that the Applicant and the Respondent who are step son and step mother respectively were joint administrators in Thika Succ Cause No. 431 of 2009, wherein the estate of the deceased was ordered to be shared between the Applicant and the Respondent, more particularly Land Parcel No. LOC 4/ NAARO/190. The Applicant was to get half share of the same as absolute owner and the Respondent was to get half share and have it as life interest and upon her demise, the same to revert back to the Applicant. However, contrary to the said judgement, the Respondent registered an absolute interest over her share of land and immediately set out to dispose the same.
 12. Further that the Applicant filed a case in Nyeri ELC and despite a judgement having been issued against the Respondent, she has refused and /or neglected to honour the said judgement. Again, the



- Respondent has allowed one John Mungai, her step grandson to construct on the suit land, and also allowed the other step granddaughter Lucy Muthoni, to bury her deceased infant on the said parcel of land.
13. It was his further submissions that clearly through her actions, the Respondent and her agents are setting a collision course of possible false claims to the Applicant's reversionary interest to the suit land in future.
 14. He urged the Court to cite the Respondent for contempt of Court as laid out in the instant application and that she be punished for the said contempt. That the Respondent be ordered to purge the contempt by complying with the Court decree issued in Nyeri ELC Case No. 236 Of 2013, in its entirety and remove at her costs the permanent structures erected by her agent on the suit land within such a limited time as the Court may direct. The Applicant relied on a litany of cases among them the case of Husein Alibhai Pirbhai & Another vs Northwood Development Company Ltd & Anor, Nairobi ELC No.185 of 2011.
 15. The Respondent on her part through Kanyi Kiruchi & Co Advocates filed her written submissions dated 28th July 2023, and submitted as follows;
 16. That indeed the Respondent has a life interest over Land Parcel No. LOC 4/NAARO/1557, which arose out of Thika Succ Cause No. 431 Of 2009.
 17. It was submitted that the Respondent is the current registered owner of the said parcel of land, but upon her demise, the reversionary interest shall vest with the Applicant herein. That though the Applicant has alleged that the Respondent is in contempt of the orders of the Court, the Respondent submitted that is not the case. The Respondent submitted on two issues;
 18. On whether the application is merited, the Respondent submitted that Applicant had the onus of proving his allegations of contempt as provided by Section 107 of the *Evidence Act*, which states as follows;
 19. whoever desires any Court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist”
 20. It was her submissions that the Applicant needed to prove his allegations and that indeed her agent John Mungai was putting up a house on the suit property and that the child of Lucy Muthoni, was buried on the said land. It was submitted that these are mere allegations which needed to be proved.
 21. Further that the Court order did not bar her from usage of the land and/or construction of her house on the suit land. She also submitted that she has not sold the suit land as it is still intact and in usage. Further that the Respondent is 80years old, and in her sunset years and she relies on her grandchildren for upkeep, medication and whatever other vulgarizes of life that come with old age.
 22. It was also submitted that no evidence was submitted that any child was buried on the suit property and that the Respondent had given a go ahead for such burial.
 23. Further that since contempt of Court proceedings are meant to limit the liberty of a citizen and thus interfering with the constitutional right and liberty, then it should not be brought on flimsy grounds and unproven allegations.
 24. The Respondent relied on the case of Sheila Cassatt Issenberg & Another Vs Antony Macharia Kinyanjui (2021)eklr, where the Court held...” The Respondent argued relying on the case of R v Attorney General & Another Exparte Mike Maina(supra). That an Applicant for contempt of Court should prove that the terms of the order were clear and unambiguous and binding on the Defendant;



that the Defendant had knowledge or proper notice of the orders; that he acted in breach of the terms of the order and that his conduct was deliberate.

26. The Respondent further argued that the standard of proof in contempt proceedings was higher than proof on the balance of probabilities and relied on the case of *Mutitika vs Baharini Farm LTD* {1985}KLR 229. It was the Respondents further submissions that the instant application lacks merit and should be dismissed with costs
27. Again, it was her submissions that the burden of proof in contempt of Court proceedings is higher than of on a balance of probability. Reliance was placed on the case of *Sheila Cassatt*{supra}, where the Court held;

contempt of Court is in the nature of criminal proceedings and therefore, proof of a case against a contemnor is higher than that of balance of probability. This is because liberty of subject is usually at stake and the Applicant must prove wilful and deliberate disobedience of the Court, if he were to succeed. This was aptly stated in *Gathara K. Mutitika vs Baharini Farm ltd*{1985} klr 227, that;

A contempt of Court is an offence of criminal character. A man may be sent to prison. It must be proved satisfactorily ... it must be beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature. However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge...recourse ought not to be had to process of contempt of Court in aid of a civil remedy where there is any other method of doing justice.....”

28. The Respondent also submitted that the offence of contempt was not adequately proved on the required standard. Reliance was placed on the excerpt of a quote from *The Cromwell J*, writing for the Supreme Court of Canada, in the case of *Carey vs Laiken*, 2015 SCC 17(16th April 2015), where he expounded the three elements of civil contempt of Court, which must be established to the satisfaction of the Court, thus;
 1. The order alleged to have been breached must state clearly and unequivocally what should and should not be done. This ensures that a party will not be found in contempt where an order is unclear. An order may be found to be unclear if, for example it is missing an essential detail about where, when, or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning.
 2. The party alleged to have breached the order must have had actual knowledge of it. It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the wilful blindness doctrine.
 3. The party alleged to be in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.
28. It was the Respondent’s further submissions that the order complained of, was not clear on the usage or the limit that the Respondent was meant to enjoy in her life time. That the said order did not expressly deny the Respondent usage of the land and by the Applicant alleging what was not expressly ordered would be contrary to the right of the Respondent.
29. On the issue of costs, it was submitted that costs do follow the event and the Respondent urged the Court to dismiss the instant application with costs.



30. The Court has now carefully considered the instant application for contempt, the supporting documents, the response by the Respondent, and the rival written submissions and finds as follows;
31. There is no doubt that the parties herein who are related have engaged in various litigations. The parties herein are stepson and step mother respectively, who are beneficiaries of the estate of the late Kungu Gunya, who was the father to the Applicant by another wife and husband to the Respondent.
32. The parties are joint administrators to the said estate of the Late Kungu Gunya, who owned Land Parcel No. Loc.4/Naaro/190. Vide Thika Succession Cause No. 431 of 2009, the above suit property Loc.4/Naaro/190, was devolved equally between the Applicant and the Respondent herein. The Applicant was granted half share absolutely, while the Respondent got a life interest over her share, and upon her demise, the same was to revert to the Applicant (Samuel Ndungu Kungu).
33. The said Judgement was not appealed against and accordingly, the suit property was subdivided equally between the Applicant and the Respondent. The resultant subdivisions were Loc.4/Naaro/1558, in favour of the Applicant, and Loc 4/Naaro/1557, in the name of the Respondent herein Veronica Waithera Kungu. This Loc.4/Naaro/1557, is the suitland herein. It was alleged that the Respondent registered the said Loc.4/Naaro/1557, in her favour absolutely, which was contrary to Court Order in Thika Succession Cause No. 431 of 2009.
34. Subsequently, the Applicant filed a case being Nyeri ELC No. 236 of 2013, against the Respondent herein to compel her to comply with the Thika Succession Cause Judgement. After the hearing of Nyeri ELC No. 236 of 2013, Judgement was entered in favour of the Applicant on 10th November 2016, and a permanent injunction was issued to restrain the Defendant (Respondent herein) either by herself, her servants, agents, from disposing, selling, transferring or in any other manner from disposing the land parcel No. Loc.4/Naaro/1557, whose reversion vests with the Applicant. Further the Respondent was inhibited from conducting, any dealings on the said land that were detrimental to the Applicants reversionary interest. The Respondent was also compelled to effect registration of Loc.4/Naaro/1557, in accordance with the Judgement of Thika, Succession Cause No. 431 of 2009.
35. A Decree to reflect the Judgement of Nyeri ELC 236 of 2013, was issued on 24th November 2016. From the court record, it is evident that when the Judgement was read over, the Respondent was not present in court.
36. Further, it is clear from certificate of official search dated 8th December 2022, that the Respondent herein Veronica Waithera Kungu, is the absolute registered proprietor of Loc. 4/Naaro/1557, as from 31st October 2013, and a title deed was issued to that effect. Further, on 17th January 2017, a restriction was placed on the said title to the effect that; “No dealings vide Decree in ELC Case No 236 of 2013(Restriction). There is no evidence of whether such restriction has been removed. There is also no evidence that the Judgement in ELC No. 236 of 2013, was ever overturned, set aside and/ or stayed by any Court.
37. Therefore, this Court will assume that the Judgement and Decree of Nyeri ELC 236 of 2013, now Murang’a ELC 11 of 2023, is valid and still in force.
38. There is also averment from the Applicant that he had filed Kandara ELC No. 2 of 2021, at Kandara PMs Court, but the same was dismissed for being Res-judicata this case. The Applicant has alleged that there is an appeal against that dismissal being Murang’a ELC Appeal No. 13 of 2021.
39. Therefore, it is evident that after the Judgement and Decree of Nyeri ELC No. 236 of 2013, the parties herein were involved again in litigation over the suit property.



40. After the dismissal of the Kandara ELC No. 2 of 2021, the Applicant filed the instant application, whereby he has sought to cite the Respondent for contempt of Court and that she be punished by imprisonment to civil jail. The Respondent has denied that she is in contempt of the Judgement and Decree of the Court. She alleged that she is enjoying her life interest over the suit property as per the Judgement of the Thika Succession Cause.
41. What is not in doubt is that the Respondent herein is a beneficiary of half share of Loc.4/Naaro/190, having a life interest, and upon her demise, the same to revert to the Applicant herein. There is also no doubt that this half share was translated to Loc. 4/ Naaro/1557, the suit property. From the available documents, this Loc. 4/Naaro/1557, was registered in the name of Veronica Waithera Kungu on 31st October, 2013. That was 3 years before the Judgement of Nyeri ELC 236 of 2013, which was delivered on 10th November 2016. However, it is evident that there is a restriction placed on the said title on 17th January 2017, to the effect that “No dealings vide Decree in ELC No. 236 of 2013.
42. The Applicant has alleged that the Respondent herein has defied the Judgement and Decree of the Court that was issued on 10th November 2016. Since it is the Applicant herein who has alleged, then he has a duty to prove the said allegations, as the Respondent has vehemently denied violating any Court orders.
43. It is evident that contempt of Court is a serious allegation, which has to be proved on the required standard.
44. Black’s Law Dictionary 9th Edition, defines Contempt as follows;
- 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”.
45. Therefore, from the above description, it is clear that contempt of Court Orders/Decree undermines fair administration of justice. The Court opined this in the case of Teachers Service Commission vs Kenya National Union of Teachers and 2 Others (2013) eKLR, where it was held;-
- A Court order is not a mere suggestion or an opinion , or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with, and it is in the interest of every person that this remains the case. To see it in any other way, is to open the door to chaos and ana`rchy and this court will not be the one to open that door. If one is dissatisfied with an order of the Court, the avenues for challenging it are also set out in the law. Defiance is not an option “
46. In Kenya, Section 5 of the [Judicature Act](#) confers Jurisdiction on the Superior Courts to punish for contempt. It states as follows;
- 5(1) of [Judicature Act](#);
- 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.”



47. Further the provision of Section 5(1) of the *Judicature Act* obligates the Courts and the law practitioners to establish what for the time being was the applicable law in England as the *Judicature Act* states;

.....the same power to punish for contempt of Court as is for the time being possessed by the High Court of Justice in England.

48. The Court of Appeal in the case of Christine Wangari Gachage vs Elibeth Wanjiru & 11 Others (2014) eKLR, held as follows;

The Provisions of Section 5(1) & (2) of the *Judicature Act* imposes.... a duty on the High Court, the Court of Appeal and Law Practitioners to ascertain the applicable law of contempt in the High Court of justice in England at the time an application is brought so as to determine the applicable law relating to contempt of Court proceedings”.

49. In the instant application, the Respondent herein has not challenged the procedure by which this application is brought to Court.

50. As the Court observed earlier, contempt of Court is a serious act, and courts do frown at such actions. The reasons why the Court punish for contempt is to uphold the dignity and authority of the Court. Further the court must guard its dignity by ensuring that there is compliance of its orders, observance and respect of the due process of law and for maintenance of public confidence in the administration of justice by Courts. If the Court do not punish for contempt, there would be chaos and threat to the rule of law and administration of justice. Therefore, a party in Contempt of Court is frowned at and sanctioned by the court.

51. In the case of Econet Wireless Kenya Ltd vs Minister for information and Communication of Kenya & Another (2005) KLR 878, the Court had this to say;

It is essential for the maintenance of the Rule of Law and order that the authority and 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 plain and unqualified obligation of every person against or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that 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 an order believes it to be irregular or even void.” (emphasis

52. Where there is prove of contempt of Court, sanctions are imposed and therefore contempt of Court proceedings take the nature of Criminal Proceedings. In such cases, the proof of contempt by the Contemnor is on a higher standard; - higher than balance of probability. In contempt proceedings, the liberty of the contemnor is at stake and the Applicant must prove that there was deliberate disobedience of the Court Order.

53. See the case of Gathara K. Mutitika vs Baharini Farm Ltd {1985} KLR 227, where the Court held that;

A contempt of Court is an offence of criminal character. A man may be sent to prison. It must be proved satisfactorily. It must be higher than proof on a balance of probabilities. Almost but not exactly beyond a reasonable doubt. The guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge.”

54. Due to the fact that if one is found guilty of contempt of court, there would be grave consequences, such as curtailing one’s freedom by being committed to Civil Jail, then it is imperative that the Court



Order is properly served upon the party cited for contempt, and the said person should have personal knowledge of that order. See the case of R Vs A.G & Another Exparte Mike Maina Kamau (supra), where the Court held that an Applicant for contempt of Court should prove that the terms of the order were clear and unambiguous and binding on the Defendant; that the Defendant had knowledge or proper Notice of the orders; that he acted in breach of the terms of the orders and that his conduct was deliberate.

55. The Applicant herein has alleged that the Respondent is in contempt of the Court's Judgement and Decree of the Court given on 10th November 2016. The Court has perused the Court file and has noted that on 10th November 2016, when Judgement was delivered, Mrs Magwa for the Plaintiff who is the Applicant herein was present. However, the Defendant who is the Respondent was absent.
56. Further the Court has seen the Notice of Motion dated 4th March 2021, filed at Kandara Principal Magistrate's Court in ELC No. 2 of 2021, wherein the Respondent Veronicah Waithera Kungu, sought to strike out the said suit for being res-judicata. In the said application, the Respondent attached the Judgement of the Court in Nyeri ELC No. 236 of 2013, and the Decree issued on 24th November 2016. Therefore, the Respondent herein was aware and had knowledge of the said Judgement and Decree of the Court. The only issue that the Court should seek answers for is whether the said Order and Decree were clear and unambiguous.
57. In the case of Carey vs Laiken, 2015 SCC 17 (16th April 2015) Cromwell J. while writing for Supreme Court of Canada held;
 - i. The order allegedly breached must state clearly and unequivocally what should and should not be done.
 - ii.
 - iii. The Party alleged to be in breach must have Intentionally done the act that the order prohibits, or intentionally failed to do the act that the order compels.
58. In the Decree of 26th November 2016, the Respondent was permanently restrained from disposing, selling, transferring or any manner howsoever from disposing of land parcel No. Loc. 4/Naaro/1557, whose reversion vests with the Applicant. The Applicant did not allege or table any evidence to the effect that the Respondent has done and/ or is intending to dispose, sell or transfer the suit property, in whatsoever manner.
59. The Respondent was also inhibited or prevented from conducting any dealing on the said land to the detriment of the Applicant reversionary interest. Indeed, the Applicant placed a restriction on the title on 17th January 2017, to the effect that "no dealings as per the Decree of Nyeri ELC No. 236 of 2013". The Applicant has alleged that the Respondent allowed one John Mungai to construct a permanent house on the suit land. The Respondent alleged that the said house being constructed thereon is her house for use and occupation, since her own is now dilapidated. The Respondent was given a life interest over the suit land.
60. The life interest did not mean that the Respondent cannot enjoy the use of the suit land as she wishes during her lifetime and construction of a permanent house is one of such use. The fact that the Respondent has a lifetime does not mean that the Applicant, who has a reversionary interest over the suit property should keep on monitoring and curtailing the Respondent from using and enjoying the use of the suit land during her life time. There is no evidence that the Respondent has done any act that is detrimental to the Applicant's reversionary interest.



61. The Applicant alleged that the Respondent allowed her step granddaughter to bury her infant child, Kungu on the suit land. No evidence of such burial. Moreover, burying an infant on the suit property did not affect the Applicant's reversionary interest, as his interest will take effect upon the demise of the Respondent herein. For now, the Applicant cannot keep on looking over the window to monitor how the Respondent is using her life interest.
62. The 3rd Order in the Decree of 10th November 2016, was to affect that the Respondent was compelled to effect registration of Loc. 4/Naaro/1557, in accordance with the Judgement in Thika Succession Cause No. 431 of 2009. The Court has seen the confirmed grant issued at Thika Succession Cause No. 431 of 2009, to the effect that Veronica Waithera Kungu was to get half share of Loc.4/Naaro/190. The said Confirmed Grant was extracted on 10th February 2013, and the suit in Nyeri ELC was filed on 19th November 2013. It is also evident that Land Parcel No. Loc.4/Naaro/1557, was registered in favour of Veronica Waithera Ndungu, the Respondent on 13th October 2013. The Decree compelling her to register the suit land was issued on 24th November 2016. That was long after the title deed was issued. The Court has seen the certificate of official search dated 8th December 2022, which shows that the land is still in the name of the Respondent as the absolute proprietor. However, there is a restriction that no dealing vide Decree ELC No. 236 of 2013. How was the Respondent supposed to deal and effect such registration over the title with the above restriction still persisting on the said title?
63. The Applicant was a party to the suit. Did he serve the said Decree to the Land Registrar, Murang'a, and he failed to effect such registration, and/or the Respondent prevented the said registration? The applicant should have gone back to court for relevant application with the aim of execution of the Judgement of the court, instead of seeking to cite the Respondent for contempt of Court. The Applicant ought to have proven that the Respondent wilfully and deliberately disobeyed the court order. In the case of Peter K. Iyego & 2 Others vs Pauline Wekesa Kode (Acc No. 194 of 2014), the Court held;
- it must be proved that one had actually disobeyed the court order before being cited for contempt.”
64. Also in the case of Mutitika vs Baharini Farm LTD (Supra), the Court further held;
- Recourse ought not to be had to process of contempt of court in aid of a Civil remedy, where there is any other method of doing justice.....”
65. The burden of proving that the Respondent is in contempt of court Judgement and Decree laid squarely on the Applicant. He failed to discharge the said burden and his averments are therefore mere allegations. Given that the liberty of the Respondent herein is as stake, the Court finds that the allegations of contempt of court have not been proven on the required standard.
66. For the above reasons, the Court finds and holds that the instant Notice of Motion Application, dated 8th December 2022, is not merited, and the said application is dismissed, entirely with costs to the Defendant/Respondent.
67. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANGA, THIS 28TH DAY OF SEPTEMBER, 2023.

L. GACHERU

JUDGE



Delivered online in the presence of: -

M/s Magwa for the Plaintiff/Applicant

Mr Wachira for the Defendant/Respondent

