



REPUBLIC OF KENYA



**Musyoki & Ano (Suing as the Administratrix of the Estate of the Late  
Laban Maingi Kitele) v Dave & 5 others (Environment & Land Case  
E038 of 2023) [2023] KEELC 20202 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20202 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E038 OF 2023  
AA OMOLLO, J  
SEPTEMBER 28, 2023**

**BETWEEN**

**DAPHINE MUENI MUSYOKI & ANO (SUING AS THE ADMINISTRATRIX OF  
THE ESTATE OF THE LATE LABAN MAINGI KITELE) ..... PLAINTIFF**

**AND**

**SAPNA DAVE ..... 1<sup>ST</sup> DEFENDANT  
PETER GIKURA MBURU ..... 2<sup>ND</sup> DEFENDANT  
IRUNGU KIMENYA ..... 3<sup>RD</sup> DEFENDANT  
ADAN DENGE ..... 4<sup>TH</sup> DEFENDANT  
ABDILLAHI HUSSEIN ..... 5<sup>TH</sup> DEFENDANT  
JAMAL ABDINOOR ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. The notice of motion dated May 23, 2023 by the 1<sup>st</sup>-6<sup>th</sup> defendants is seeking that the plaintiffs be cited for contempt and detained in prison for a term of 6 months for obtaining court orders on February 21, 2023 through irregular means and compensate the 1<sup>st</sup>-3<sup>rd</sup> defendants for any loss suffered.
2. The application was supported by an affidavit sworn on 23<sup>rd</sup> May 2023 by Sapna Dave outlining the grounds of the motion, inter alia that the Plaintiffs filed this suit against the Defendants and a subsequent Notice of Motion dated February 8, 2023 seeking for orders of temporary injunction. That the motion was heard on February 21, 2023 ex parte for non-attendance on the part of the 1<sup>st</sup>-3<sup>rd</sup> defendants, and orders issued against them.



3. They depose that the plaintiffs have never served the defendants with their pleadings or inform them of any pending hearing dates yet they proceeded to effect the impugned orders in nocturnal hours of the day by invading the suit property with rowdy goons and without the supervision of any Government Authority. That the Plaintiffs injured the personnel of the 1<sup>st</sup> to 3<sup>rd</sup> defendants which cause of action has been reported at Eastleigh North police station under OB No.37.
4. The Defendants stated that Khair Din Chaudhri is the registered proprietor of the suit property and vide an irrevocable Specific Power of Attorney dated July 24, 1990 the 1<sup>st</sup> defendant was given authority to deal with the said property.
5. The plaintiffs in opposition to the application filed a replying affidavit sworn on August 15, 2023 by Daphine Mueni Musyoki on her own behalf and on behalf of the 2<sup>nd</sup> plaintiff. She deposed that the court orders in subject were issued by the court which later varied the same and asked the defendants to respond to it for the court's determination. Further, that the allegations being raised by the defendants were the exact claims brought against them for their actions therefore bringing their motion is in bad faith and are seeking to re-visit a matter which the court had clearly addressed, clarified and laid to rest.
6. The plaintiffs contended that there is no order issued by the court that they have failed to comply with and that the defendant's motion is misconceived, has no merit and is a waste of judicial process and time
7. The defendants filed submissions dated July 24, 2023 and submitted that due to the actions of the plaintiffs in their failure to serve the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants with the Notice of Motion application. That they were not accorded an opportunity to defend the said application and their rights to be heard was infringed as the matter proceeded ex-parte. It is their contention that the failure to serve interfered with the proper administration of justice by the court; contrary to section 4 of the Contempt of Court Act, and against the natural justice doctrine of audi alteram partem. In support cited the case of Sangram Singh V Election Tribunal, Kotch, AIR 1955 SC 664, at 711 and James Kanyita Nderitu v Mariés Philotas Ghika & another [2016] eKLR.
8. The gist of the application by the defendants is that the plaintiffs are in contempt of court for obtaining ex parte orders after failing to issue service of the application. Contempt of court is that conduct or action that defies or disrespects authority of court. It is conduct that impairs the fair and efficient administration of justice. Black's Law Dictionary 9<sup>th</sup> 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.”
9. It is not contested that the plaintiff obtained orders ex parte for non-attendance which orders have since been reviewed and the defendants filed their responses to the impugned application. Failure to serve a party is contrary to the provisions of order 5 of the Civil Procedure Rules and it is a process but not the provision is not court order. It is my considered view that obtaining court orders ex parte does not amount to despising the authority of a court punishable as contempt.
10. In this instance, there was no court order capable of being disobeyed and even if the failure to serve was to be deemed as such, no proceedings were taken to establish that indeed there was no proper service upon the defendants. The conclusion is that the alleged contempt was also not proved within the required standards. I find the application dated May 23, 2023 brought by the 1<sup>st</sup> to 3<sup>rd</sup> defendants as an abuse of the court process and is without merit. It is hereby dismissed with costs to the plaintiffs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF SEPTEMBER, 2023**



**A. OMOLLO**

**JUDGE**

In the presence of

Mr Bruno for 1<sup>st</sup> -3<sup>rd</sup> Defendants

Ms Moku for Plaintiff

Mr Jama for 5<sup>th</sup> -6<sup>th</sup> Defendants

Court assistant: Valentine

