



REPUBLIC OF KENYA



**Ranjira & 3 others v Ranjira & 4 others (Environment & Land Case
96 of 2021) [2023] KEELC 22643 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 22643 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT & LAND CASE 96 OF 2021**

**AE DENA, J
SEPTEMBER 21, 2023**

BETWEEN

**JUMA HAMISI RANJIRA 1ST APPLICANT
OMAR JUMA RANJIRA 2ND APPLICANT
YUSSUF OMNAR RANJIRA 3RD APPLICANT
JUMA OMAR RANJIRA 4TH APPLICANT**

AND

**AMINI JUMA RANJIRA 1ST RESPONDENT
HASSAN FUNDI CHIDZUGA 2ND RESPONDENT
MWANAPILI CHONGE NYAWA 3RD RESPONDENT
LEAKEY NGETII MUTUA 4TH RESPONDENT
SHUKRANI ABDALLA DAIDO 5TH RESPONDENT**

RULING

1. The application subject of this ruling is dated 20/2/2023. The same has been brought for consideration by the firm of Onyango Onunga Advocates under the provisions of Section 5 of the *Judicature Act*, Section 1A, 1B and Section 3A of the *Civil Procedure Act* Cap 21 Laws of Kenya, Order 11 Rule 3[1],1, Order 40 Rule 3 of the *Civil Procedure Rules* 2010 and Sections 3,4[1] [a] & 6 of the *Contempt of Court Act* for the following orders;
 1. Spent
 2. That the honourable court be pleased to order that the 1st Defendant/Respondent and his agents John Baya Stephen, Shukran Abdalla Daido, Halima Saadia Haji and Doughlas



Kanguru Mwayi be committed to civil jail for a term not exceeding six [6] months for disobeying court orders issued on 23rd of November 2020 and to consequently purge the disobedience of the court's order.

3. That the costs of this application be borne by the 1st Defendant/Respondent.
2. It is important at this early stage to put issues into context for clarity. It is common ground that the applicants initially filed a Notice of Motion application dated 18/5/2021 seeking the 1st Defendant/Respondent attendance in court to show cause why he should not be committed to civil jail for a term not exceeding 6 months for disobeying the orders of the court. The acts complained of were cutting several trees and delivering construction material on the suit property. This court delivered a ruling on 25/1/2022 and dismissed the application for failure by the applicant to prove the allegations to the required standard. The court however having discussed the issue of want of clarity of the status quo orders, directed that counsels should engage and propose an order that would bring clarity on what was expected of the parties as to how the status quo was to be maintained. The matter was fixed for mention on 3/02/22 for adoption of the proposed orders. Parties did not comply.
3. On 22/3/2022 this court issued orders that the District Surveyor Kwale visit the suit property for purposes of identifying its location following emerging concerns by the defendant of the actual suit property and filing a ground status report. This followed a ground status report filed on 18/3/22 which confirmed that several activities had taken place on the suit property and which included construction, subdivision and transfer of the suit property to several other parties. On 24/01/23 Ms. Onyango informed the court that the site visit by the District Surveyor Kwale had not been undertaken as the defendants failed to provide their 50% share of the projected expenses. Ms. Onyango prayed the application be reinstated for the reason that the 1st defendant had transferred two parcels during the pendency of the suit despite the existing orders of status quo. The court was of the view that a fresh application should be filed.
4. The application is premised on the grounds that the Defendants/Respondents were barred by a restraining order from interfering, trespassing, dealing selling leasing digging carrying on construction works of any nature and/or in any manner dealing with the suit property plot No. Kwale/Kombani Settlement Scheme/354 vide directions of this court issued on 23/11/2020. That the 1st Defendant/Respondent contrary with what was directed, cut down several coconut trees and delivered construction material on the suit property. It is stated that the 1st Defendant/Respondent failed to appear before court for a notice to show cause why he should not be committed to civil jail for contempt of the court orders.
5. According to the Applicant, a site visit of the suit property conducted on 17/3/22 which confirmed that the 1st defendant had indeed breached the orders of the court issued on 23/11/2020. The court is urged to allow punish this impunity against the 1st Defendant/Respondent and his associates as listed in the prayers.
6. The application is supported by an affidavit sworn by Juma Hamisi Ranjira the 1st Plaintiff/Applicant. Referring to the 1st Defendant Replying Affidavit dated 28/10/21 denying interference with the suit property and the replying affidavit dated 10/5/21 denying knowledge of the status quo order of 23/11/2020 it is averred by the applicant that the defendant being aware and being warned against non-compliance of the orders of the court subdivided the suit property into several other portions and had the same transferred to himself and several other parties as outlined in paragraph 7 of the affidavit despite orders barring him to do so. The Applicant seeks that the 1st Defendant/Respondent is committed to civil jail for disobedience of the orders of 23/11/2020.



7. In opposing the application, the 1st Defendant/Respondent filed a replying affidavit dated 31/5/2023 and stated that he has never dealt with the suit property in anyway as stated in the supporting affidavit to the application. It is further stated that the subdivision of the plots listed under paragraph 7 of the supporting affidavit has nothing to do with the suit property and were undertaken long before the instant suit was instituted. The court is asked to dismiss the application with costs.

Determination

8. The parties did not file submissions but opted to rely on the affidavits filed in support and in reply to the application. Having considered the same, the issue for consideration is whether the applicant has proved the contempt to the required standard.
9. Following the declaration in the case of *Kenya Human Rights Commission vs. Attorney General & Another* [2018] eKLR, where Mwita J declared that the entire *Contempt of Court Act* No 46 of 2016 to be invalid for lack of public participation, the law now applicable is section 5 of the *Judicature Act* (Cap 8 Laws of Kenya) which provides; -
- (1) 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.
 - (2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.’
10. The above legal position was reiterated by the Court of Appeal in the case of *Christine Wangari Gachege vs. Elizabeth Wanjiru Evans & 11 Others* [2014] eKLR.
11. I have already given the background of this application. The present application refers to court order issued via Microsoft teams on 23/11/2020 despite this courts observation in the earlier ruling that the court file does not bear any record of proceedings of the said order. For the avoidance of doubt the only record of proceedings where the issue of status quo featured was on 12/10/20 and 25/02/22. On the said 12/10/20 when Mr. Birir based on his clients admission of subdivision and sale agreed on status to be maintained and undertook that his clients would not transfer. Further my predecessor reiterated that the status quo be maintained on 24/2/21 following Mr. Birir undertaking not to do anything. Subsequently on 10/11/21 this court directed that orders for status quo be extended which I reiterated on 18/11/21.
12. Clearly there were existing orders of status quo to be maintained. The court sought to bring clarity on the same but parties never presented any order for adoption as directed. It is however clear from the entire proceedings that the issue of contempt has been a thorn in the flesh of the plaintiffs’ applicant (see the proceedings of 24/2/21, 18/5/21 where the court noted it appeared the issue of contempt was still persisting. But most importantly are the proceedings of 27/10/21 where the court as part of its directions on the disposal of the previous application stated thus; -
- ‘The respondents are sternly warned against interfering with the suit property. Mr. Birir as an officer of the court is under a duty to inform his clients on the consequences of failure to obey court orders’.



13. This court will therefore proceed from the foregoing premises and it is obligated to put to rest the matter of contempt that has kept emerging in these proceedings. But I will first discuss the concept of status quo before I delve into the issue of the contempt herein.
14. The *Black's Law Dictionary*, Butter Worths 9th Edition, defines Status Quo as a Latin word which means "the situation as it exists".
15. The purpose of an order of status quo has been reiterated in a number of court decisions: In *Republic Vs National Environment Tribunal, Ex-parte Palm Homes Limited & Another* [2013] e KLR, Odunga J. stated,

"When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve existing state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario..."
16. In *TSS Spinning & Weaving; Company Ltd Vs Nic Bank Limited & another* [2020] e KLR, the court unpacked the purpose of a status quo order as follows:

"In essence therefore, a status quo order is meant to preserve the subject matter as it is/existed, as at the day of making the order. Status quo is about a court of law maintaining the situation or the subject matter of the dispute or the state of affairs as they existed before the mischief crept in, pending the determination of the issue in contention."
17. In *Kenya Airline Pilots Association (KALPA) Vs Co-operative Bank of Kenya Limited & another* [2020] e KLR, the purpose of a status quo order was explained as follows:

"..... By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision."
18. So what is to be in contempt of such orders? *Halsbury's Law of England*, Vol.9(1) 4th Edition defines contempt of court as follows;

"Contempt of Court can be classified as either criminal contempt, consisting of words or acts which impede or interfere with the administration of justice or which creates substantial risk that the course of justice will be seriously impeded or prejudiced, or contempt in procedure, otherwise known as civil contempt consisting of disobedience to Judgment, Orders or other process of Court and involving in private injury".
19. In the case of *Sam Nyamweya & Others v Kenya Premier League Ltd and Others* [2015] eKLR Justice Aburili stated that: -

"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."
20. it is now settled that the standard of proof is slightly above that of balance of probabilities. The Supreme Court in *Republic v Ahmad Abolfathi Mohammed & Another* (2018) upheld the standard of



proof of contempt as per the holding of the Court of Appeal in the case of Mutitika v. Baharini Farm Limited [1985] KLR 229, 234 that the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt. I would say this echoes the standard of proof in cases of fraud.

21. Applying the foregoing principles to the present case I will proceed to determine the main issue while focusing on the subdivisions and transfers which are the gist of this application. The suit property was to remain as it was to maintain its substratum given the orders of status quo. The applicant exhibited several Certificates of Official searches for Kwale/Kombani S.S/2837 transferred to Douglas Kanguru on 8/11/22, Kwale/Kombani S.S/2836 transferred to 1st defendant on 9/3/2022, Kwale/Kombani S.S/2777 transferred to John Baya Stephen and charged to Rafiki Bank on 1/8/22, Kwale Kombani S.S/2515 transferred to Leakey Ngeti Mutua and Shukrani Abdalla Daido were issued with title deed on 24/6/20.
22. The 1st defendant's response is that the subdivision Kwale/Kombani S.S/2777, 2515,2791,2837 and 2836 have nothing to do with the suit property but he does not produce evidence to show that they are from a different property altogether. He further avers that the subdivisions were undertaken way before the present suit was filed. I have already outlined what the searches revealed. The suit herein was filed on 12/10/20. It is only the transfer of Kwale Kombani S.S/2515 that took place before the suit was filed. The rest of the transfers occurred after the present suit was filed and some as late as August 2022 when the issue of contempt on the part of the 1st defendant had been raised on several occasions before court. The 1st defendant/respondent was represented in court and I already stated elsewhere that Mr. Birir undertook that there would be no transfer. I find that the 1st defendant was well aware of the same and as such he cannot cry wolf for his activities of subdividing the land and selling it to various people. Additionally, this court had already given a stern warning on the consequences of disobeying orders of the court.
23. The above to me further cements the fact that breach was committed deliberately and with malafide. In this regard I'm persuaded by the Justice Mativo's holding in Samuel M.N. Mweru & Others v National Land Commission & 2 others (2020)eKLR that the test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed deliberately of malafide.
24. I note that the applicant has included the registered proprietors of the subdivided portions as parties liable for contempt. In citing and punishing any party for contempt, it has to be clearly stipulated as to what the party is specifically in contempt of. I note that no caution had been lodged on the suit property at the land registry and neither was an inhibition registered against dealings on the same. The transferees in my view purchased the land without the knowledge that there was an impending court case over the suit property for no such records were at the lands office. It is my view therefore that the applicant has not been precise as to the contemptuous actions of the other parties listed in prayer 2 of the application especially the transferees. I am guided by the holding in Titus Musyoki Nzioka v John Kimathi Maingi & Another (2013) eKLR, where J. B. Havelock relied on the case of Dean v Dean [1987] 1 FLR 517, where it was stated that an application for contempt of Court or its antecedent orders has to establish clearly and precisely exactly of what the Respondent was in contempt of.
25. The upshot of the foregoing is that I find that the applicant has proved to the required standard of proof that the 1st Defendant/Applicant breached the court orders that the status quo be maintained. The application dated 20/2/2023 partly succeeds in the following terms;



1. The 1st Defendant/Respondent is in contempt of the court orders of 10/11/2021 and is hereby fined a sum of Kshs. 100,000/- payable within 90 days and in default of the same he be committed to civil jail for a period of 6 months.
2. Each party to bear its own costs.

It is so ordered.

DELIVERED AND DATED AT KWALE THIS 21ST DAY OF SEPTEMBER, 2023.

.....

A.E. DENA

JUDGE

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Ms. Onyango for the Plaintiff/Applicant

Mr. Birir for the Defendant/Respondent

Mr. Daniel Disii Court Assistant.

