



**Nyaruri (Suing on behalf of Jason Nyaruri Onditi) & another v Nyaruri & 3 others
(Environment & Land Case 44 of 2020) [2023] KEELC 21032 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21032 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 44 OF 2020
A OMBWAYO, J
OCTOBER 26, 2023**

BETWEEN

**SUING ON BEHALF OF JASON NYARURI ONDITI 1ST PLAINTIFF
BEATRICE BONCHERE NYARURI (SUING ON BEHALF OF JASON NYARURI
ONDITI) 2ND PLAINTIFF**

AND

ABEL HAYORA NYARURI DEFENDANT

AND

NYARURI RESPONDENT

AND

LAND REGISTRAR NAKURU DEFENDANT

AND

NAKURU RESPONDENT

RULING

1. The Plaintiff filed the instant application dated 25th July, 2023 seeking orders that Abel Hayora Nyaruri be committed to civil jail for a period of six months for contempt of court. That in the alternative to prayer 3 above, Abel Hayora Nyaruri be fined Kshs.1, 000,000 for disobeying court orders. That costs of this Application be borne personally by Abel Hayora Nyaruri the Respondent herein.
2. The Application was based on grounds set out and supported by the Affidavit of Jason Nyaruri Onditi sworn on 25th July, 2023.



3. It was stated that on 23rd July, 2020 the court had issued directions and ordered that parties maintain the status quo from the date the suit was filed in regard to Njoro/ngata Block 2/1613 (kirobon “a”).
4. That the court ordered the status quo of the property be maintained and that the Plaintiff’s daughter Beatrice Bonchere Nyaruri remains in possession of the suit property without interference until the suit is heard and determined.
5. It was further stated that the 1st Defendant vide an application dated 20th November, 2020 sought for orders restraining the Plaintiff’s daughter from accessing the main house on the suit property but the application was dismissed. That on 16th July, 2023 the 1st Defendant evicted the Plaintiff’s daughter and her grandchildren from the suit property contrary to the court orders. He added that the status quo orders did not grant the 1st Defendant the right to evict the Plaintiff’s daughter from the suit property.
6. In conclusion, the Plaintiff stated that the contemnor was aware of the court orders and that his actions are contemptuous and amount to abuse of authority. He urged the court to intervene so as to restore its dignity and authority for the rule of law to be respected.

1st Defendant’s Grounds of Opposition

7. The 1st Defendant herein filed its Notice of Preliminary Objection dated 11th August, 2023 where the court directed that the same be deemed as his grounds of opposition to the instant application.
8. It was his general contention that the impugned Replying Affidavit by the Plaintiff should be struck out for being defective since it was sworn in Nakuru yet the Plaintiff was in the USA.

Submissions

9. The 1st Defendant filed his submissions dated 21st September, 2023 on 22nd September, 2023. He identified two issues for determination, one whether the instant application ought to be struck out for being a nullity and whether he is entitled to costs.
10. On the first issue, he submitted that the impugned affidavit is defective and should be struck out since it was sworn in Nakuru yet the Plaintiff was in the USA. He added that the Plaintiff has not made a rejoinder to the Defendant’s Replying Affidavit despite the fact that his advocates were served. He relied on Section 5 of the Oaths and Statutory Declarations Act and argued that every commissioner for oaths shall state truly in the jurat at what place and on what date the oath or affidavit is made.
11. He cited a number of authorities including the case of *Mary Gatboni & Another V Frida Ariri Otolu & Another [2020]* eKLR and the case of *CMC Motors Group Limited V Bengeria arap Korir trading as Marben School & Another [2013]* eKLR. He submitted that for any affidavit to pass it must be sworn in compliance with Section 5 of the Oaths and Statutory Declarations Act. It is his argument that the 1st Defendant swore a Replying affidavit where he stated under oath that the Plaintiff was in the USA on 25th July, 2023 when he swore the same in Nakuru. He argued that the same was not denied.
12. He submitted that it was impossible for the deponent to execute the impugned affidavit in Nakuru yet at the same time be in the USA. He argued that the two events could only happen at one place and at the same time. He added that the electronic signature ought to have conformed to the said provisions of the law. The 1st Defendant submitted that the said affidavit is misleading and fraudulent and ought to be struck out for non-compliance with Section 5 of the Oaths and Statutory Declarations Act.
13. He urged the court to award him costs.



Analysis and Determination

14. This court has looked into the application and the grounds of opposition filed by the parties and is of the view that the main issue for determination is whether the 1st Defendant should be committed to civil jail for disobedience of court of the court orders issued on 18th November, 2020.
15. The *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.
16. Section 5(1) of the Judicature Act which provides that:

“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.”
17. Section 29 of the Environment and Land Court further provides that;

“Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both”
18. In the case of *North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjohi (2016)* eKLR Justice Mativo stated as follows: ' writing on proving the elements of civil contempt, learned authors of the book Contempt in Modern New Zealand have authoritatively stated 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 - (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 defendant's conduct was deliberate.”
19. It is not in dispute that this court via orders given 18th November, 2020 ordered that parties maintain the status quo where the Plaintiff remains in possession of the main house. It further ordered that the 1st Defendant would continue using the land and that there would be no interference by either party until the suit is heard and determined.
20. It is this court's view that in light of the Plaintiff's averment in her supporting affidavit that she has since been evicted from the main house by the 1st Defendant has not been controverted. In addition, it is worthwhile to note that indeed the 1st Defendant was aware of the terms of the court order in line with maintaining the status quo as he had earlier filed an application that sought this court to vary its orders so as to deny the Plaintiff access to the main house but the same was dismissed. The 1st Defendant has not denied having evicted the Plaintiff from the main house. There is clear photographic evidence of the house hold items removed from the main house contrary to the earlier orders given by this court that the Plaintiff remains in possession of the main house. It was clear that the order directing that the *status quo* of the suit property be maintained was to the effect that the 1st Defendant's use of the suit land should not constitute denying the Plaintiff access and use of the main house.



21. The contention by the 1st Defendant in his grounds of opposition that the affidavit sworn by the Plaintiff is defective is rather irrelevant to the issue of whether the court orders were disobeyed or not. He has blatantly failed to address the issue of whether he breached the court orders or not.
22. In view of the foregoing, this court has established that the 1st Defendant is in breach of the court orders issued on 18th November, 2020 since he proceeded to evict the Plaintiff from the main house in the suit property.
23. In the upshot, this court finds the 1st Defendant in breach of the said orders and hereby order as follows:
 1. That the 1st Defendant be committed to civil jail for a period of 30 days for contempt of court or in the alternative to pay a fine of Two Hundred Thousand Kenya Shillings (Kshs. 200,000)
 2. That warrants of arrest be issued to the 1st Defendant.
 3. The costs of this application be borne by the 1st Defendant.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY ON THE 26TH OCTOBER 2023

A.O.OMBWAYO

JUDGE

