



**Sonto & 3 others v Tuukuo (Environment and Land Case Civil Suit
E005 of 2021) [2023] KEELC 20943 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20943 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND CASE CIVIL SUIT E005 OF 2021
CG MBOGO, J
OCTOBER 26, 2023**

BETWEEN

**NAISIANOI SONTO 1ST PLAINTIFF
RIAMET SONTO 2ND PLAINTIFF
FRED LESINKO SONTO 3RD PLAINTIFF
KOLETI SONTO 4TH PLAINTIFF**

AND

MUNKASIO OLE TUUKUO DEFENDANT

RULING

1. Before this court for determination is the Notice of Motion Application dated 8th March, 2023 and filed in court on 9th March, 2023 by the plaintiffs/applicants. The application expressed to be brought under Article 159 of the Constitution, Order 40 Rule 1,2 & 3 and Order 51 of the Civil Procedure Rules and Sections 1A and 1B of the Civil Procedure Act seeking the following orders: -
 1. Spent.
 2. That Munkasio Ole Tuukuo, the defendant herein do stand committed to civil jail for a period of time as this honourable court may determine for contempt of this honourable court in knowingly and willfully committing, breaching, aiding, abetting and authorizing violation and/or disregard of the orders made by this honourable court in this suit and otherwise interfering with the administration of justice, the authority and dignity of a court of law.
 3. That a declaration that the incident that occurred on 26th February, 2023 on the suit property and the attempt to evict and burn the houses of the plaintiffs



by the defendant is in contempt of court and disrespect to the authority and dignity of this honourable court.

4. That defendant is in blatant disobedience of the court's orders of 12th May, 2021 and has trashed with impunity the orders of this court.
 5. That the actions of the respondent have caused the plaintiffs to suffer irreparable loss and damage and psychological torture and anguish.
 6. That court's dignity has been greatly undermined by the actions of the defendant by openly disobeying court orders.
 7. That unless the defendant is punished for contempt, the continuation of the main suit would be an exercise in futility.
2. The application is premised on the grounds inter alia that on 12th May, 2021, this court issued injunctive orders prohibiting the eviction of the plaintiffs/applicants from the suit property known as CisMara/Naikokilok/104 which orders were extracted on the same day and served upon the defendant/respondent on 20th May, 2021.
 3. The application was supported by the affidavit of the 3rd plaintiff/applicant which was sworn on even date. In his affidavit, the 3rd plaintiff/applicant with the authority of the 1st and 2nd plaintiffs/applicants deposed that the orders of this court issued on 12th May, 2021 were extracted on the same day, endorsed with a penal notice and duly served upon the defendant/respondent on 20th May, 2021. Further, that when the matter came up for hearing on 15th February, 2023, the contemnor was warned by this court not to actualize his threats against the plaintiffs/applicants and this court advised him to restrain himself until the disposal of the suit. Further, he deposed that on 26th February, 2023, in total disregard of court's advise, the defendant/respondent in his mischievous effort to evict the plaintiffs/applicants from the suit property, invaded the homestead of the plaintiffs/applicants and caused a serious turmoil resulting in violence and breach of law and order.
 4. The 3rd plaintiff/applicant further deposed that the defendant/respondent personally hired goons to cause mayhem and disruption of peace which action unequivocally and unmistakably implies that the court orders have been disobeyed with extra ordinary show of arrogance and impunity in total disregard to the rule of authority and dignity of this court.
 5. The 3rd plaintiff/applicant further deposed that the defendant/respondent forcibly removed the tractor that he had hired to plough the portion of the property and it took their efforts and the public to prevent the defendant/respondent from torching their homes. Further, that the defendant/respondent has openly declared that the court orders are just mere papers and of no consequential effect and that he will not respect the orders and advice given by this court. He further deposed that having been served with the court orders and in full knowledge of the same as well as being aware of the penalty of disobeying a court order, the defendant/respondent has continued to make their lives and stay on the suit property unbearable and has no regrets or intention to purge the contempt.
 6. The 3rd plaintiff/applicant further deposed that they have been obstructed and the frustration mechanisms are developed to hamper their occupation of the land and effectively displacing them which measures are meant to ridicule and embarrass the honour and dignity of this court.
 7. The 3rd plaintiff/applicant further deposed that the defendant has vowed that he will not allow the usage of the land irrespective of whether there is a court order and that he will continue with the acts



of disobedience and as such, the defendant/respondent should be cited for contempt of valid court orders and punished severely.

8. On 22nd March, 2023, the defendant/respondent filed his replying affidavit dated 15th March, 2023. The defendant/respondent while denying the averments raised in the supporting affidavit, deposed that he is the registered owner of the suit land and that the orders issued do not prohibit him from accessing any homestead and use that portion of land which is his occupation of a portion of the suit land where his 1st wife resides. He further deposed that the confrontation was provoked by the husband of the 4th plaintiff/applicant acting in collusion with hired goons who attacked and injured him in an attempt to force out his hired tractor from that portion of land which he is in occupation and possession. Further, that it would be misleading for the plaintiffs/applicants to purport eviction and torching of houses when in fact, it is the 4th plaintiff's/applicant's husband who had deliberately provoked the fight.
9. The defendant/respondent denied having encroached the suit land and maintained that it is the 4th plaintiff's/applicant's husband who attacked him together with his son resulting in a confrontation that involved clan and family members from the two sides in this matter. He further deposed that he has not in any way or denied or interfered with the plaintiffs'/applicants' access to their homestead but the plaintiffs/applicants did not have any right to bar him from accessing his homestead or plough that portion of land in his possession and occupation.
10. He further deposed that the plaintiffs/applicants brought in a tractor to plough the entire piece of land upto his doorstep in an attempt to provoke a confrontation and his occupation and use of his piece of land has been made unbearable. Further, that other than the order issued on 12th May, 2021 directed to the District Land Registrar prohibiting any dealings with the suit piece of land, the defendant/respondent is not aware of and has not been served with any other orders restraining him from accessing his homestead and utilizing that portion of the land.
11. The defendant/respondent further deposed that he has not disobeyed or conducted himself in a manner that would undermine the authority of this court and instead, it is the plaintiffs/applicants who have repeatedly used proceedings herein to deny him his constitutional right to freely access, own and enjoy peaceful occupation and possession of his land.
12. On 8th August, 2023, the 3rd plaintiff/applicant filed a further affidavit in response thereto which was sworn on 18th July, 2023. The 3rd plaintiff/applicant deposed that the defendant/respondent is aware of the court orders issued by this court on 12th May, 2021 and denied attempts to prevent the defendant/respondent from accessing his homestead. Further, that the defendant/respondent invaded their homestead without any provocation and that it is clear from the deposition and various admissions of the defendant/respondent that he acted outside the law and was maliciously intent on evicting the plaintiffs/applicants.
13. The 3rd plaintiff/applicant further deposed that when the court granted the interlocutory orders, he had demonstrated a prima facie case with a probability of success to warrant the grant of a conservatory order in the terms sought in this application.
14. The application was canvassed by way of written submissions. On 8th August, 2023, the plaintiffs/applicants filed their written submissions dated 18th July, 2023 where they raised three issues for determination as listed below:-
 1. What amounts to contempt?
 2. Was the defendant herein in contempt of the court orders issued on 12th May, 2021?



3. Does the court have the power to supervise that its orders are not issued in vain?
15. On the first and second issues, the plaintiffs'/applicants' submitted that this court issued injunctive orders forbidding the District Land Registrar from registering any entries in the suit parcel register and the defendant/respondent from evicting the plaintiffs/applicants. They submitted that the defendant/respondent disobeyed this court orders on 26th February, 2023 by invading the portion of the suit property occupied by the plaintiffs/applicants and in an attempt to evict the plaintiffs/applicants, caused a tractor to plough the area occupied by the plaintiffs/applicants and through his hired goons, attempted to burn down their houses. The plaintiffs/applicants submitted that the reason why courts punish a person for contempt is to safeguard the rule of law which is fundamental in the administration of justice and that a party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed. The plaintiffs/applicants relied on the cases of *Mutitika v Babarini Farm Limited* [1985] KLR 229,234, *Kenya Tea Growers Association v Francis Atwoli & 5 others* [2012] eKLR and *Hadkinson v Hadkinson* (1952) 2 All ER 567.
16. On the third issue, the plaintiffs/applicants submitted that a court order is not a mere suggestion or an opinion or a point of view and that if one is dissatisfied with an order of the court, the avenues challenging it are set out in law. Further, that defiance of a court order is not an option. Reliance was placed in the cases of *Econet Wireless Kenya Limited v Minister for Information Communication of Kenya & another* [2005] eKLR and *Gubabchand Popatial Shah & another*, Civil Application No 39 of 1990 (unreported).
17. By the time of writing this ruling, the defendant/respondent had not filed his written submissions. Be that as it may, I have considered the application and the replies thereof and the written submissions filed by the plaintiffs/applicants and in my view, the issue for determination is whether the respondent is in contempt of the orders issued by this court on 12th May 2021.
18. The *Black's Law Dictionary* (Ninth Edition) defines contempt of Court as:-
 “Conduct that defies the authority or dignity of a Court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
19. The law guiding the present application is Order 40 Rule 3(1) of the *Civil Procedure Rules* which stipulates as follows: -
 “In cases of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the Court directs his release.”
20. Also, Section 29 of the *Environment and Land Court Act* is clear to the effect 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.”
21. In the case of *Samuel M. N. Mweru & others v National Land Commission & 2 others* [2020] eKLR the court held that
 “A Court without contempt power is not a Court. [30] The contempt power (both in its civil and criminal form) is so innate in the concept of jurisdictional authority that a Court



that could not secure compliance with its own judgments and orders is a contradiction in terms, an “oxymoron.” Contempt power is something regarded as intrinsic to the notion of Court; even obvious, I would say. In the common lawyer’s eye, the power of contempt “is inherent in Courts, and automatically exists by its very nature...”

If courts are to perform their duties and functions effectively and remain true to the spirit which they are sacredly entrusted with, the dignity and authority of the courts has to be respected and protected at all costs. Otherwise the very cornerstone of our constitutional scheme will give way and with it will disappear the Rule of Law and a civilized life in the society. It is for this purpose that courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside courts which tend to undermine their authority and bring them in disrepute and disrespect by scandalizing them and obstructing them from discharging their duties. When the court exercises this power, it does so to uphold the majesty of the law and of the administration of justice. The foundation of judiciary is the trust and confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working the edifice of the judicial system gets eroded.

33. It is essential for the maintenance of the Rule of Law and Order that the authority and the dignity of courts is 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 the 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 void.^[32]

34. It is the duty of the court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with contemnors.^[33] The court does not, and ought not be seen to make orders in vain; otherwise the court would be exposed to ridicule, and no agency of the constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.^[34]”

22. In the case of *Ex parte Langely* 1879, 13 Ch D/10 (CA) Thesiger L.J stated at P. 119 as follows: -

“...the question in each case, and depending upon the particular circumstances of each case, must be, was there or was there not such a notice given to the person who is charged with contempt of Court that you can infer from the facts that he had notice infact of the order which has been made? And, in a matter of this kind, bearing in mind that the liberty of the subject is to be affected, I think that those who assert that there was such a notice ought to prove it beyond reasonable doubt.”

23. In this case, the 3rd plaintiff/applicant, in his affidavit deposed that this court issued injunctive orders on 12th May, 2021 which were extracted on the same day. He further deposed that the said orders were served upon the defendant/respondent on 20th May, 2021 and that whereas the defendant is aware



- of the said orders, he is in blatant disobedience of the orders as he attempted to evict the plaintiffs/applicants from the suit land by causing serious turmoil resulting in violence and breach of law and order.
24. The defendant/respondent in his affidavit has not denied lack of service of the orders but denied knowledge of any orders directed towards him pertaining to eviction of the plaintiffs/applicants. I noted from the supporting affidavit and the replies, that both parties are accusing and blaming each other as the cause and force behind the incident that took place on 26th February, 2023 with both parties reporting the incident to the police.
25. It is clear that the defendant/respondent was aware of the orders of the court but has denied being in disobedience. I have looked at the affidavit of service sworn by Daniel K. Kihara on 24th May, 2021. In his affidavit, the process server deposed that on 20th May, 2021, he received relevant court documents from the plaintiffs'/applicants' advocates with instruction to serve the same upon the defendant/respondent, which he did on the same date. A reading of the court order issued on 12th May, 2021 indicates that it was issued *Ex parte* which in my view, the plaintiffs/applicants ought to have ensured that service of the said orders are within the period stipulated by law.
26. Order 40 Rule 4 (3) of the *Civil Procedure Rules* provides: -
- ‘In any case where the court grants an *Ex parte* injunction the applicant shall within three days from the date of issue of the order serve the order, the application and pleading on the party sought to be restrained. In default of service of any of the documents specified under this rule, the injunction shall automatically lapse’.
27. The orders were issued on 12th May, 2021 and served upon the defendant/respondent on 20th May, 2021 which period was outside the timeframe provided under Order 40 Rule 4 (3) of the *Civil Procedure Rules*. In my view, failure to serve the order would mean that the injunctive orders automatically lapsed after 3 days and in this case on 17th May, 2021. An order that has lapsed cannot be the basis upon which any contempt proceedings can be founded.
28. Arising from the above, I find that the Notice of Motion Application dated 8th March, 2023 lacks merit and the same is dismissed. Costs shall abide the outcome of the suit.
29. Mention on 2nd November, 2023 for further directions. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 26TH DAY OF OCTOBER, 2023.

HON. MBOGO C.G.

JUDGE

