



REPUBLIC OF KENYA



**KENYA LAW**  
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**Principal Magistrate Rongo PM Court & 2 others v Aluochier (Environment & Land  
Petition E010 of 2022) [2023] KEELC 21978 (KLR) (23 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21978 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIRONMENT & LAND PETITION E010 OF 2022  
MN KULLOW, J  
OCTOBER 23, 2023**

**BETWEEN**

**PRINCIPAL MAGISTRATE RONGO PM COURT ..... 1<sup>ST</sup> APPLICANT**

**KOMONDI FREDRICK OLUOCH ..... 2<sup>ND</sup> APPLICANT**

**ANN ADHIAMBO OWALA ..... 3<sup>RD</sup> APPLICANT**

**AND**

**ISAAC ALUOCHIER ..... RESPONDENT**

**RULING**

1. By Notice of Motion dated 30<sup>th</sup> June, 2023, the Applicants sought for the following orders: -
  - a. The Honourable Court be pleased to grant leave to the Applicants to cite the Respondent, Isaac Aluochier to Show Cause why he should not be charged with the offence of contempt of court.
  - b. The costs of this Application be in the cause.
2. The application is based on the 5 grounds thereof and on the 2<sup>nd</sup> Applicant's Supporting Affidavit sworn on even date. The applicants aver that they filed a suit against the Petitioners in the trial court in Rongo; an Order of maintaining status quo in respect to the suit land No Kamagambo/ Kanyawanga/ 1359 was issued in the case.
3. It is their claim that the Respondent herein, upon being told by the trial court that he had no capacity to act for the petitioners; the Respondent started visiting the suit land and inciting the Defendants/ Petitioners to disobey the court order while alleging that the 3<sup>rd</sup> Applicant had no capacity to sell her deceased father's land.



4. Consequently, the Defendants/ Petitioners started to disobey the court orders, despite the several warnings by the trial magistrate to observe the orders of injunction issued by the court.
5. It was further his contention that the Respondent through his Affidavit dated 04/11/2022 is delving on matters which are sub judice and making adverse allegations against the trial court by questioning the dignity and authority of the trial court. They thus urged the court to allow the Application as sought.
6. The application was not opposed. Despite being served with the Application herein and given time to respond to the same, the Respondent has neither responded to the allegations made against him nor filed submissions.
7. The Application was canvassed by way of written submissions. Only the Applicants filed their written submissions, which I have read and considered.

### **Analysis and Determination**

8. Having read the Application, Affidavit in support and the submissions on the court record; I am of the considered view that the sole issue arising for determination is whether the instant Application is merited and the Applicants are entitled to the orders sought.
9. The Applicants herein has sought leave to cite the Respondent to show cause why he should not be charged with the offence of contempt. It is their claim that the Respondent has been inciting the Defendants in the suit pending at the Rongo PMS Court and the Petitioners in the instant case; to disobey the orders of injunction and/or status quo to their detriment and thus interfering with the administration of justice.
10. Contempt is defined in the Black's Law Dictionary as;  

“Contempt is a disregard of, disobedience to, the rules, or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body.”
11. Before delving into the merits of the Application, it is important for the court to first determine whether the orders sought against the Respondent are tenable in order to ensure this court does not issue orders in vain.
12. In *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another*, Ibrahim J (as he then was) in addressing the issue on contempt made the following sentiments: -  

“It is essential for the maintenance of the Rule of Law and order that the authority and the 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 the plain and unqualified obligation of every person against or in respect of whom, an order is made by 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.” (emphasis mine)
13. I have critically looked at the Application and the Supporting Affidavit and the allegations made therein. It is not in doubt that the Respondent herein, Isaac Aluochier, is not a party in the trial court



suit pending in the Rongo Principal Magistrates Court. Thus, the temporary orders of injunction and/or orders of status quo issued in the matter were not directly made against him neither do the said orders relate to him. He cannot therefore be cited as a contemnor for deliberate disobedience of a court order which were not issued against him.

14. Further, the Application is based on the fact that the Respondent is “inciting” the Defendants to disobey the court orders. These claims of incitement have not been satisfactorily proved and thus remain unsubstantiated claims. This court is a court of record and it is well settled that he who alleges must prove.

15. It is important to note that even though the instant Application was not opposed, the Applicants are still under a duty to prove their claim to the required standard. To this end, I am guided by the decision in *Kenya Power & Lighting Company Limited v Nathan Karanja Gachoka & another* [2016] eKLR, where the Court stated that:-

“I am of the opinion that uncontroverted evidence must bring out the fault and negligence of a defendant, and that a court should not take it truthful without interrogation for the reason only that it is uncontroverted. A plaintiff must prove its case too upon a balance of probability whether the evidence is unchallenged or not.”

16. The upshot of the above, I accordingly find that the Application dated 30<sup>th</sup> June, 2023 is not merited and the same is hereby dismissed with no orders as to costs. It is so ordered.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MIGORI ON 23<sup>RD</sup> DAY OF OCTOBER, 2023.**

**MOHAMMED N. KULLOW**

**JUDGE**

Ruling delivered in the presence of: -

.....for the Applicants

.....for the Respondent

Court Assistant - Tom Maurice/ Victor

