



Sankei v Cheruiyot; Aruasa, Bii, Langat & Sigei (In their Capacity as Chairman, Secretary and Treasurer of Botoret Farmers Group) & 4 others (Interested Parties) (Environment & Land Case 270 of 2017) [2023] KEELC 21803 (KLR) (29 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21803 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 270 OF 2017
CG MBOGO, J
NOVEMBER 29, 2023**

BETWEEN

TITAME OLE SANKEI PLAINTIFF

AND

JOHNSON KIMUTAI CHERUIYOT DEFENDANT

AND

**HUMJOLI KEBENEI ARUASA, LIVINGSTONE BII, CHARLES ADAM
KIPROTICH LANGAT & FRANCIS KIPNGENO SIGEI (IN THEIR CAPACITY
AS CHAIRMAN, SECRETARY AND TREASURER OF BOTORET FARMERS
GROUP) INTERESTED PARTY
KAPSET TEA FACTORY COMPANY LIMITED INTERESTED PARTY
NYOONYUAT SANKEI INTERESTED PARTY
POLOLET SANKEI INTERESTED PARTY
FELIX MAINA SANKEI INTERESTED PARTY**

RULING

1. Before this court for determination is the Notice of Motion Application dated 9th August, 2023 filed by the defendant/applicant expressed to be brought under Order 40 Rule 3, of the Civil Procedure Rules and Section 3 and 3A of the [Civil Procedure Act](#) seeking the following orders: -
 1. Spent.
 2. That this honourable court be pleased to enforce the orders issued on 9th July, 2019.



3. That this honourable court be pleased to punish the directors of the 2nd interested party herein by detaining them in jail for a term not exceeding six months for contempt of court for disobeying orders issued on 9th July, 2019 by this honourable court pending hearing and determination of this matter.
 4. That this honourable court be pleased to make such further orders as is just in the circumstances.
 5. That cost of this application be borne by the respondents herein.
2. The application is premised on the grounds inter alia that the 2nd interested party is in breach of the orders of this court issued on 9th July, 2019 as it has continued putting up structures, grazing cows and cutting trees.
 3. The application is supported by the affidavit of the defendant/applicant sworn on even date. In his affidavit, the defendant/applicant deposed that on 9th July, 2019, the court issued orders barring the plaintiff/respondent and his agents from interfering with the suit land pending hearing and determination of the matter. He further deposed that between the 18th July, 2023 and 8th August, 2023, the 2nd interested party put up structures, fell down trees and herd their livestock which acts are illegal in themselves and contemptuous hence meant to defeat justice.
 4. The application was opposed by the replying affidavit of Cheruiyot Kemei Tamogei on behalf of the 2nd interested party which was sworn on 28th August, 2023 and filed in court on 15th September, 2023. In its response, the 2nd interested party deposed that on 5th July, 2019, this court issued injunctive orders against the plaintiff/respondent and during the time, they were not a party to the suit and hence were not aware of the court's order.
 5. The 2nd interested party further deposed that upon perusal of the said ruling, they noted that the order of injunction was explicitly sought against the plaintiff/respondent-Titame Ole Sankei who is not an agent or a principal of the 2nd interested party. Further, that the 2nd interested party was the registered owner of parcel known as LR. No. CisMara/Ololulunga/17306 and 17055 since 8th May, 2018 long before the impugned order was issued.
 6. The 2nd interested party further deposed that upon acquiring and taking possession of the properties, they planted eucalyptus trees which the defendant/applicant maliciously cut them down in the year 2020. Further, that they have all along complied with the orders of this court even though initially, they were not parties to the suit. Further, it was deposed that the allegations by the defendant/applicant are utter lies meant to mislead this court. Further, that the defendant/applicant never issued, the 2nd interested party with a penal notice against any specific officer and that the application is malafides and constitutes abuse of the court process. Further, that there are two other suit pending over the same subject matter i.e. ELC Civil Suit No. 25 of 2020 and ELC Civil Suit No. 9 of 2022.
 7. The application was canvassed by way of written submissions on 5th October, 2023 the defendant/applicant filed his written submissions of even date. The defendant/applicant submitted that on 9th July, 2019, this court issued orders against the plaintiff/respondent restraining him from interfering with parcel no. Cis Mara/Ololulunga/17052-17060 pending the hearing and determination of the suit. He submitted that the orders were specific in stopping or preventing further dealing with the suit property which terms of the order the 2nd interested party failed to honour.
 8. The defendant/applicant further submitted that the 2nd interested party was aware of the court order as it was contained in the supporting affidavit dated 12th September, 2019 and in the replying affidavit



- dated 28th August, 2023. He submitted that the 2nd interested party had full knowledge of the order and were aware of its implications.
9. The defendant/applicant further submitted that the 2nd interested party wilfully and deliberately disobeyed the court orders and should be held in contempt of the same.
 10. On 20th November, 2023, the 2nd interested party filed its written submissions dated 10th November, 2023. The 2nd interested party submitted that the defendant/applicant did not bother to lead any evidence of the purported acts of contempt and further did not provide proof that the directors had personal knowledge of the court order and disobeyed the same. The 2nd interested party relied on the cases of Gatharia K. Mutikika versus Baharini Farm Limited [1985] KLR 227 and Sheila Cassatt Issenberg & Another versus Antony Machatha Kinyanjui [2021] eKLR.
 11. I have considered the application, replying affidavit and the rival submissions filed by the parties herein and, in my view, the issue for determination is whether the 2nd interested party ought to be cited for contempt.
 12. 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.”
 13. 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.”
 14. 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.”
 15. In the case of Samuel M. N. Mweru & Others versus 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]”

16. In the case of *Exparte 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.”

17. In the instant case, it was the defendant’s/applicant’s assertion that the 2nd interested party is in wilful disobedience of the court orders issued by this court on 9th July, 2019. Bearing in mind the seriousness as to the impact of a party found to be in contempt of the orders of this court, it is necessary that before this court pronounces itself on the same, that the court is satisfied that indeed there was contempt.

18. I have perused the proceedings herein and I have carefully analysed the ruling delivered on 5th July, 2019 by Kullow, J in page 7 of the said ruling, the court observed as follows “On the issue of whether the application is sub judice and premature as relates to the joinder of proposed interested party, as stated by the respondent I have not found any order sought by the applicant against the proposed interested party as the orders sought are explicit as against the respondent herein.”emphasis mine.

19. The ruling, the subject of contempt proceedings was filed by the defendant/applicant against the plaintiff/respondent herein. My understanding of the above captioned extract indicates that the orders of injunction were express and directed towards the plaintiff/respondent. The terms thereof were also very clear to the effect that ‘the orders sought are explicit as against the respondent herein.’

20. The question then is whether the 2nd interested party is in contempt of the orders of this court. I find that it is not, for the reasons said above. Contempt proceedings have far reaching consequences and



the court in considering such an application ought to be extremely careful in analysing the material placed before it.

21. Arising from the above, this court finds that the Notice of Motion Application dated 9th August, 2023 lacks merit and the same is hereby dismissed. Costs in the cause. Mention on 6th December, 2023 for further directions. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL on this 29TH day of NOVEMBER, 2023.

HON. MBOGO C.G.

JUDGE

29/11/2023.

