



**Lengamaldanyani & another v Sirata Oirobi Group Ranch & 7 others;
Lenemiria & 6 others (Interested Party) (Environment & Land Petition
6 of 2023) [2023] KEELC 21804 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21804 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT & LAND PETITION 6 OF 2023
YM ANGIMA, J
NOVEMBER 23, 2023**

BETWEEN

GODFREY LENGAMALDANYANI 1ST PETITIONER

FREDRICK LEMPIRIKANY 2ND PETITIONER

AND

SIRATA OIROBI GROUP RANCH 1ST RESPONDENT

CHAIRPERSON SIRATA OIROBI GROUP RANCH 2ND RESPONDENT

SECRETARY SIRATA OIROBI GROUP RANCH 3RD RESPONDENT

TREASURER SIRATA OIROBI GROUP RANCH 4TH RESPONDENT

NYAHURURU COUNTY LAND REGISTRAR 5TH RESPONDENT

CHIEF LAND REGISTRAR 6TH RESPONDENT

HON. ATTORNEY GENERAL 7TH RESPONDENT

NORTHERN TRANGELANDS TRUST 8TH RESPONDENT

AND

RICKY LENEMIRIA & 6 OTHERS INTERESTED PARTY

RULING

A. Petitioners' Application

1. Vide a notice of motion dated 21.02.2023 expressed to be based upon Article 159(1) & 2(b) of [the Constitution](#) of Kenya, Section 5 of the [Judicature Act](#) (Cap. 8), Part 81 of the Civil Procedure Rules



of England and Wales, Sections 1A, 1B, 3A and 63 of the *Civil Procedure Act* (Cap.21) the Petitioners sought the following orders:

- a. Spent;
 - b. Spent;
 - c. The 2nd, 3rd and 4th Respondents and Ricky Lenemiria, Zablon Lenemiria, Mpapayio Letoona, Lee Lenemiria, George Lengusuranka, Leyewa Letiktik and Julius Letiktik who are members of the 1st Respondent be and are hereby cited for contempt of court for disobedience of the order of the honourable court of 27.01.2022.
 - d. The 2nd, 3rd and 4th Respondents and Ricky Lenemiria, Zablon Lenemiria, Mpapayio Letoona, Lee Lenemiria, George Lengusuranka, Loyewa Letiktik and Julias Letiktik be committed to civil jail and/or detained in prison for disobedience of the order of the honourable court issued herein and dated 27.01.2022 for such period not exceeding six (6) months as the honourable court may determine or until such as the condemnors will have complied with the order of the honourable court dated 27.01.2022.
 - e. Further to prayer 4 above, property of the 2nd, 3rd and 4th Respondents are Ricky Lenemiria, Zablon Lenemiria, Mpapayio Letoona, Lee Lenemiria, George Lengusurang'a Loyewa Letiktik and Julius Letiktik be attached and sold with the proceeds thereof being deposited in court to satisfy such award in penalty as the honourable court may determine.
 - f. An order be and is hereby issued to the 2nd, 3rd and 4th Respondents and Ricky Lenemiria, Zablon Lenemiria, Mpapayio Letoona, Lee Lenemiria, George Lengusurang'a, Loyewa Letiktik and Julias Letiktik to demolish any fences and/or structures that any of them or their agents or employees might have put up in violation of the order of 27.01.2022.
 - g. The costs of this application be provided for.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavits sworn by Timothy Kasaine Lendorop and Elijah Alex Lendorop both sworn on 21.02.2023 and a further supporting affidavit by Elijah Alex Lendorop on 20.04.2023. The Petitioners contended that in spite of the interim injunction granted by the court on 27.01.2022 the 2nd to 4th Respondents and the cited contemnors had deliberately disobeyed the same by forcibly taking over the disputed allotted parcels of land and fencing them in such manner as to block access to some of the Petitioners' homes. It was further alleged that they had also destroyed and vandalized property belonging to some of the Petitioners. They annexed some photographs to their affidavits in a bid to demonstrate the alleged contempt. The Petitioners therefore prayed for orders punishing the alleged contemnors for violating the interim orders made on 27.01.2022 through imprisonment and attachment of their properties.

B. Respondents' Response

3. The 2nd – 4th Respondents (Respondents) filed a replying affidavit sworn by Peter Lekampus Lempirikany on 23.03.2023 in opposition to the application. The said affidavit was sworn on behalf of the 2nd – 4th Respondents. It was contended that the application for contempt was incompetent and merely intended to delay the course of justice. It was contended that the Petitioners had not come to court with clean hands since they were engaged in activities intended to undermine the interim order by taking possession and fencing off some of the disputed plots allocated by the Group Ranch.



4. It was contended that the survey, sub-division and allocation of the disputed plots by the Group Ranch had taken place prior to the issuance of the interim orders of 27.01.2022 and that some members had already taken possession of their respective plots.
5. The Respondents further stated that the standard of proof in contempt of court proceedings was quite high and that the Petitioners had failed to meet the legal threshold. It was further contended that the application for contempt was essentially based on hearsay which could not prove the alleged contempt to the required standard.

C. Interested Parties' Response

6. The interested parties also filed a replying affidavit sworn by the 4th Interested Party Lee Lenemeria on 23.03.2023. He stated that he had the authority of the rest of the interested parties to swear the affidavit on their behalf. The interested parties opposed the application on several grounds. First, they contended that they had lived peacefully on the disputed plots alongside the deponents of the supporting affidavits for over 20 years. Second, that they were not parties to the petition and they had not been served with any documents or orders in the matter save the instant application. Third, that there was no evidence on record to demonstrate that they had violated the interim orders as alleged. Fourth, that the standard of proof in contempt of court proceedings was quite high due to the penal consequences attendant to a finding of guilt and the Petitioners had not met the necessary threshold.
7. The Interested Parties' exhibited photos to their replying affidavit purporting to show that the road and gate leading to the homes of the deponents of the supporting affidavits were not blocked and had that the borehole of Elijah Alex Lendorop was still intact and had not been vandalized. They also exhibited a photograph depicting a tractor ploughing what they stated was the land of Timothy Lendorop.

D. Directions on Submissions

8. When the application was listed for inter partes hearing it was directed that the same shall be canvassed through written submissions. Consequently, the parties were granted timelines within which to file and exchange their respective submissions. The record shows that the Petitioners' submissions were filed on 09.05.2023 whereas the Respondents' and the Interested Parties' submissions were filed on 26.05.2023.

E. Issues for Determination

9. The court has considered the Petitioners' notice of motion dated 21.02.2023, the replying affidavit in opposition thereto as well as the Petitioners' further supporting affidavit. The court has also considered the material and submissions on record and is of the opinion that the following key issues arise for determination herein:
 - a. Whether the contempt alleged against the 2nd – 4th Respondents has been proved to the required standard.
 - b. Whether the contempt alleged against the Interested Parties has been proved to the required standard.
 - c. Whether the 2nd – 4th Respondents and the Interested Parties ought to be punished for contempt of court.
 - d. Whether the Petitioners are entitled to the consequential orders sought.
 - e. Who shall bear costs of the application.



F. Analysis and Determination

a. Whether the contempt alleged against the 2nd – 4th Respondents has been proved to the required standard

10. The court has considered the material and submissions on record on this issue. In the case of *Kasturi Limited –vs- Kapurchard Depar Shah* [2016] eKLR it was held that in order for an application for contempt of court to succeed the applicant must demonstrate:

- a. That the terms of the order allegedly breached were clear and unambiguous.
- b. That the alleged contemnors had knowledge of the terms of the order.
- c. That the alleged contemnors wilfully or intentionally flouted the terms of the order.

11. As to the standard of proof in contempt of court proceedings it was held in the case of *Mutitika –vs- Baharini Farm Limited* [1985] eKLR thus:

“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily ... It must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt.

The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extent it to offences which can be said to be quasi-criminal in nature.”

12. Whereas the Petitioners submitted that they had proved the contempt alleged against the Respondents the latter contended otherwise. So, what was the evidence of contempt of the court order of 27.01.2022 against the 2nd – 4th Respondents. The Petitioners stated that the alleged contempt was committed by the Interested Parties with the “knowledge” and “tacit support” of the 2nd – 4th Respondents. It was also alleged that two of the Interested Parties were brothers of the 3rd Respondent.

13. The court finds no evidence on record of the alleged “tacit” support by the 2nd – 4th Respondents in the conduct alleged on the part of the Interested Parties. The mere fact that the 2nd – 4th Respondents may have been aware of the alleged actions cannot be a basis for holding them in contempt of court. There is no evidence on record to show that they aided and abetted the contempt alleged against the Interested Parties. The mere fact that two of the Interested Parties were relatives of the 3rd Respondent cannot be a basis for holding him vicariously liable for the actions of his brothers when there is no evidence on record to demonstrate that those siblings were acting on his instructions or for his benefit. As a result, the court finds absolutely no evidence to link the 2nd – 4th Respondents to the actions alleged against the Interested Parties.

b. Whether the contempt alleged against the Interested Parties has been proved to the required standard

14. The court has considered the material and submissions on record on this issue. It is evident from the material on record that the Interested parties were not party to the petition and the proceedings for interim orders. The Petitioners claimed that the interim orders were served upon the Respondents who notified all members of the group ranch including the Interested Parties of the terms of the orders made on 27.01.2022.



15. The Interested Parties, on their part, denied knowledge and service of the order and pointed out that there was no affidavit of service on record to demonstrate either service or knowledge of the order. It was further submitted that there was no credible evidence of violation of the said interim order in any event.
16. The court is inclined to agree with the Interested Parties that there is no evidence on record to demonstrate that they were made aware of the terms of the interim order made on 27.01.2022. There is no sworn statement from any of the Respondents that they notified the Interested Parties of the terms of the interim order. The mere fact that the Interested Parties were among the allottees of the disputed plots allocated by the group ranch is not necessarily evidence of knowledge of the interim order made on 27.01.2022. In the premises, the court finds that the Petitioners have failed to demonstrate either service or knowledge of the interim order on the part of the Interested Parties. As a consequence, the contempt alleged against them is incapable of being proved to the required standard.

c. Whether the 2nd – 4th Respondents and the Interested Parties ought to be punished for contempt of court

17. The court has found that the Petitioners have failed to prove the contempt alleged against the 2nd – 4th Respondents. The court has also found that the Petitioners have failed to prove the contempt alleged against the Interested Parties to the required legal standard of proof. It would, therefore, follow that there would be no legal basis for punishing the Respondents and the Interested Parties for contempt of court either by their committal to jail or attachment of their properties.

d. Whether the Petitioners are entitled to the consequential orders sought

18. The court has already found that the contempt alleged against the Respondents and the Interested Parties has not been proved to the required standard. The court has further found and held that they ought not to be punished for the alleged contempt. It would, therefore, follow that the Petitioners are not entitled to the consequential orders seeking demolition of any fences or structures erected by the Interested Parties.

e. Who shall bear costs of the application

19. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. Although the Petitioners have not succeeded in their application for contempt of court, court is not inclined to condemn them to pay costs because the Respondents and the Interested Parties were not entirely blameless in the whole matter. The court is thus of the opinion that each party should bear his own costs of the application.

G. Conclusion and Disposal Order

20. The upshot of the foregoing is that the court finds that the Petitioners have failed to prove the contempt alleged against the 2nd – 4th Respondents and the Interested Parties to the required standard. Consequently, the court makes the following orders for disposal of the Petitioners' application:
 - a. The notice of motion dated 21.02.2023 be and is hereby dismissed in its entirety.
 - b. Each party to the proceedings shall bear his own costs of the application.



- c. Since the suit property is located in Samburu County the file is hereby transferred to the ELC Nyahururu where the petition was filed.
- d. As the petition is already part heard, the matter is hereby fixed for further hearing on 26th and 27th February, 2024 at Nyahururu before Justice Y.M. Angima.

It is so ordered.

RULING DATED AND SIGNED AT NYANDARUA AND DELIVERED THIS 23RD DAY OF NOVEMBER, 2023 VIA MICROSOFT TEAMS.

In the presence of

Mr. Lungwe holding brief for Mr. Kitipa for the Petitioner

Ms. Masheti holding brief for Mr. Karanja Mbugua for the 1st – 4th Respondents and the Interested Parties

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Y. M. ANGIMA

JUDGE

