



REPUBLIC OF KENYA



**Wainaina & 3 others v Mwangi (Environment and Land Appeal
10 of 2022) [2023] KEELC 21777 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21777 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL 10 OF 2022
MD MWANGI, J
NOVEMBER 23, 2023**

BETWEEN

**ALEXANDER MBURU WAINAINA 1ST APPELLANT
PETER MAITHYA 2ND APPELLANT
PATRICK MULI NZAU 3RD APPELLANT
NZIOKA NYUMU 4TH APPELLANT**

AND

MOSES MWANGI RESPONDENT

(In respect of the Appellant's Application for Contempt against the Respondent)

RULING

Background

1. The Application for consideration is the Appellant's Notice of Motion Application dated 28th October, 2021 brought under the provisions of Sections 1A, 1B & 3A of the *Civil Procedure Act* and order 46 rule 3 of the *Civil Procedure Rules*. The Appellant essentially prays that the Court finds the Respondent in Contempt of the Court Orders of 25th June, 2021 and punish/penalize him with an imprisonment for 6 months and or penalty of Kshs 5,000,000/=.
2. The Appellant's application is premised on the grounds that the Respondent has displayed disrespect to the authority of the Court by failing to comply with the Order of 25th June, 2021 issued by Lady Justice Hewing Ong'undi despite him having been personally served with the said orders.
3. The Application is further supported by the affidavit of Alexander Mburu Wainaina. The deponent affirms the grounds on the face of the application. He deposes that the Respondent in deliberate display of disobedience of the Court proceeded to remove doors to the subject premises and put enormous



heaps of soil at the entrance to the shops thereby barring the Appellants from accessing the premises. The Applicants therefore aver that the Respondent is in Contempt of Court and urge the Court to punish the Respondent for that disregard of the authority of the Court.

4. The application was opposed by the Respondent by way of a Replying Affidavit sworn on 7th June, 2022. The Respondent denied the Applicant's allegations asserting that the Applicants had already vacated the suit premised by the time of the issuance of the Orders of 25th June, 2021. The Respondent too denied being personally served with the Orders of the Court.

Court's Directions

5. The Court's directions were that the Appellants' application be canvassed by way of written submissions. Both parties complied and the Court has had an opportunity to read the same.

Issues for determination

6. The issue for determination is whether the Appellants' have established a case of Contempt of Court against the Respondent. However, the issue of the jurisdiction of the court also arises and the court must determine it pronto before even going into the merits of the Appellants' application.

Analysis and Determination

7. I must begin by pointing out that the Appellants initially filed this Appeal vide the Memorandum of Appeal dated 14th June, 2021. The Appeal is against the Order of the Business Premises Tribunal (BPRT) of 4th June, 2021 in BPRT Case No. G5 of 2021. The Appeal was however filed in the High Court. It was only on 9th June, 2022 when the file was transferred to this Court.
8. Lady Justice Meoli, in her brief ruling stated that the appeal arose from the BPRT and should have been filed in the Environment and Land Court in the first place. She therefore ordered that the file be transferred to the Environment and Land Court.
9. In essence, Lady Justice Meoli's finding was that the High Court lacked the Jurisdiction to entertain and deal with the matter. That finding put into its proper context means that the High Court then did not have the authority to issue any orders in that filing for want of jurisdiction. Any order made by a court without jurisdiction is null and void. As was aptly stated in the case of *Macfoy -vs- United Africa Co. Ltd* [1961] 3 AllER, 1169:

“If an act is void, then it is in Law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it so. And every proceeding which is founded on it, is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”
10. The Order that the Appellants have premised their application for Contempt on is a nullity. Article 165(5)(b) of *the Constitution* is explicit that the High Court shall not have jurisdiction in respect of matters:

“Falling within the jurisdiction of the Courts contemplated in Article 162 (2)”.
11. The Application by the Appellants having been founded on a null and void order is bad and incurably bad.



12. I need not say more. The Application dated 28th October, 2021 is hereby struck out with costs to the Respondent.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS

23RD DAY OF NOVEMBER, 2023.

M. D. MWANGI

JUDGE

In the virtual presence of:

Ms Shikali holding brief for Mr. Kiprop for the Respondent.

No appearance for the Appellant/Applicant.

COURT: Ruling read virtually.

M. D. MWANGI

JUDGE

