



REPUBLIC OF KENYA



**Ahmed v Varsani & 3 others (Environment & Land Case E013 of 2023)
[2023] KEELC 21654 (KLR) (20 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21654 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E013 OF 2023
CA OCHIENG, J
NOVEMBER 20, 2023**

BETWEEN

SALAT SOMO AHMED PLAINTIFF

AND

JADAVJI GOVIND VARSANI 1ST DEFENDANT

PREMBAI JADAVJI VARSANI 2ND DEFENDANT

THE CHIEF LAND REGISTRAR 3RD DEFENDANT

THE REGISTRAR OF LAND MAVOKO 4TH DEFENDANT

RULING

1. What is before Court for determination is the Plaintiff's Notice of Motion Application dated the 25th April, 2023 where he seeks the following Orders:-
 1. Spent
 2. That the 1st and 2nd Respondents be denied audience completely till they purge be Contempt herein.
 3. That summons be issued against the 1st and 2nd Defendants/Respondents to appear before court and show cause why he should not be committed to civil jail for such term as the court may deem just.
 4. That on failing to show necessary cause, the 1st and 2nd Defendants be fined as punishment for contempt of this Honourable Court's Orders issued on 13th March, 2023 by Lady Justice A. Nyukuri in ELC No. E013 of 2023 Salat Somo Ahmed Vs Jadavji Govind Varsani and Others.
 5. That this Honourable Court be pleased to order the 1st and 2nd Defendants/Respondents be committed to civil jail for a period of six (6) months for contempt for disobedience of the orders



issued on 13th March, 2023 by Lady Justice A. Nyukuri in ELC No. E013 of 2023 Salat Somo Ahmed Vs Jadavji Govind Varsani and Others.

6. That this Honourable Court be pleased to order the Officer Commanding Station, Syokimau Police Station, to enforce the status quo order issued on 13th March, 2023 by Lady Justice A. Nyukuri in ELC No. E013 of 2023 Salat Somo Ahmed Vs Jadavji Govind Varsani and Others.
 7. That costs of this Application be provided for.
2. The Application is based on the grounds on the face of it and the Supporting Affidavit of Salat Somo Ahmed where he made reference to the Order of this Court issued on 13th March, 2023. He claims the 1st and 2nd Defendants have ignored the said orders and instructed their servants/agents/representatives to destroy his property and evict him out of LR No. 12715/14287, hereinafter referred to as the 'suit land'. He contends that the 1st and 2nd Defendants' agents/servants/representatives forcefully invaded the suit land after which his guards denied them access to the premises and as a knee jerk reaction, they reported the matter at Mavoko Police Station claiming they had been assaulted by the Plaintiff's agents/servants/representatives. He states that the acts of the 1st and 2nd Defendants/Respondents have severely infringed and continue to infringe on his right to quiet possession as well as other rights enshrined in *the Constitution*. He avers that the suit land is in jeopardy on account of destruction by the 1st and 2nd Defendants who have illegally, unprocedurally and blatantly gone ahead to irregularly evict him out of it despite the *status quo* orders in place. He reiterates that the 1st and 2nd Defendants had actual knowledge of the *status quo* orders in place therefore they should be cited for contempt of court in willfully disobeying the impugned orders. He reaffirms that the 1st and 2nd Defendants have not filed any documents or pleadings to ascertain their impugned and alleged ownership of the suit land despite the court's directions on 13th March, 2023. Further, that the contemnors have colluded with the Officer Commanding Station-Syokimau Police Station, Charity Njeru, who has taken the mantle to ascertain the veracity of the claim of ownership of the suit land, whose mandate is for this Court and not Police Officers.
3. The 1st and 2nd Defendants did not file any response to oppose the instant Application.
 4. The 3rd and 4th Defendants opted not to participate in the said Application.

Analysis and Determination

5. Upon consideration of the instant Notice of Motion Application dated the 25th April, 2023 including the Supporting Affidavit and submissions the only issue for determination is whether the 1st and 2nd Defendants should be cited for contempt, denied audience and committed to jail for six (6) months.
6. The Plaintiff in his submissions reiterated his averments as per the Supporting Affidavit. He contends that the 1st and 2nd Defendants had knowledge of the impugned orders of the Court granted on 13th March, 2023 but proceeded to deliberately and intentionally disobey them. To support his averments, he relied on the following decisions: *Republic v Attorney General & Another Ex parte Mike Maina Kamau* [2020] eKLR; Civil Application No. Nai 1 of 2017 Dr. *Fred Matiangi - the Cabinet Secretary, Ministry of Interior and Coordination of National Government v Miguna Miguna & 4 Others and Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another* [2005] KLR 828.

Black's Law Dictionary (Ninth Edition) describes contempt of Court as follows:-

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.”



7. In *Halsbury's laws of England* at para 463 Vol 9(1) (Re-issue) 3, it was stated as follows:-

“.....and a person not a party against whom any judgement or order may be enforced is liable to the same process for enforcing obedience to it as if he were a party.”

While Section 29 of the *Environment and Land Court Act* stipulates 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.”

Justice Mativo (as he then was), in the case of *North Tetu Farmers Co. Ltd v Joseph Nderitu Wanjobi* [2016] eKLR while dealing with civil contempt observed that:-

writing on proving the elements of civil contempt, learned authors of the book *Contempt in Modern New Zealand* have authoritatively stated as follows:-

“there are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases - (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant; (b) the defendant had knowledge of or proper notice of the terms of the order; (c) the defendant has acted in breach of the terms of the order; and (d) the defendant's conduct was deliberate.”

8. In the current scenario, the Court on 13th March, 2023 made various orders which included:

2. That Status Quo obtaining in respect to parcel LR No. 12715/14287 (original 12715/110/3) be maintained pending hearing and determination of the application dated 21st February, 2023 so that no parties shall further develop or transfer the suit property pending determination of the said application.”

9. I note the said order was made in the presence of the Plaintiff and Defendants' Counsel. Further, it has not been denied that it was the Plaintiff who was in possession and occupation of the suit land when the impugned orders were granted. The 1st and 2nd Defendants' despite the existence of the impugned order proceeded to evict the Plaintiff including his agents from the suit land and that is the fulcrum of this Application.

10. The 1st and 2nd Defendants despite being granted leave to file their respective responses to the instant Application failed to do so. This in essence means the Plaintiff's averments are uncontroverted. In the case of *Shimmers Plaza Limited v National Bank of Kenya Ltd* [2015] eKLR the court held as follows:-

The notice of the order is satisfied if the person or his agent can be said to either have been present when the order was given or made; or was notified of its terms by telephone, email or otherwise. In our view, 'otherwise' would mean any other action that can be proved to have facilitated the person having come into knowledge of the terms of the judgement and/or order. This would definitely include a situation where a person is represented in court by counsel. Once the Applicant has proved notice, the Respondent bears an evidential burden in relation to wilfulness and mala fides disobedience.”

See also the case of *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another* [2005] KLR 828.

11. In associating myself with the decisions cited above, I am of the view that the Plaintiff has proved that the alleged contemnors who were represented by their Counsel had knowledge of the status quo



ordered issued on 13th March, 2023 which was clear unambiguous but proceeded to disobey it. Further, that the disobedience of the impugned order, which is not denied, was indeed willful and mala fides.

12. It is against the foregoing that I find the instant Notice of Motion Application dated the 25th April, 2023 merited and will allow it. I will proceed to make the following final Orders:
- a. The 1st and 2nd Defendants herein be and are hereby cited for contempt of Court Order issued on 13th March, 2023.
 - b. That the 1st and 2nd Defendants be and are hereby denied audience completely till they purge the Contempt herein.
 - c. That summons be and is hereby issued against the 1st and 2nd Defendants to appear before court and show cause why they should not be committed to civil jail for a period of six (6) months for being in contempt and or disobedience of the orders issued on 13th March, 2023.
 - d. That the Officer Commanding Station, Syokimau Police Station, be and is hereby directed to enforce the status quo order issued on 13th March, 2023 by Lady Justice A. Nyukuri in ELC No. E013 of 2023 Salat Somo Ahmed v Jadavji Govind Varsani and Others.
 - e. That costs of this Application is awarded to the Plaintiff.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 20TH DAY OF NOVEMBER, 2023

CHRISTINE OCHIENG

JUDGE

