



REPUBLIC OF KENYA



Wanjala & 12 others v Musioma & others (Environment & Land Case 300 of 2004) [2023] KEELC 21874 (KLR) (20 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21874 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 300 OF 2004
LN MBUGUA, J
NOVEMBER 20, 2023**

BETWEEN

NEWTON WANJALA & 12 OTHERS PLAINTIFF

AND

JOSEPH ZIRO MUSIOMA & OTHERS DEFENDANT

RULING

1. The plaintiffs' notice of motion application dated 19.6.2022 is for determination. The plaintiffs seek orders that this court holds the 1st defendant in contempt of court orders issued on 21.2.2005 by Hon Mr. Justice Ransley and that he be committed to jail for a term of 6 months or to such period as the Honourable Court may deem fit.
2. The application is premised on grounds on its face and on the 1st Plaintiff's supporting affidavit sworn on 19.6.2023. He avers that on 21.2.2005, Hon Mr. Justice Ransley issued orders allowing the 1st Defendant to carry out civil works on the undisputed part of the suit property, but the 1st Defendant has gone ahead to excavate and graded roads on the Plaintiffs' disputed parcels of land and is now at the stage of putting bitumen.
3. The application is opposed by the 1st defendant vide his replying affidavit sworn on 29.9.2023. He avers that pursuant to the orders issued by Ransley J. on 21.2.2005, he was allowed to carry out civil works on the undisputed part of the suit property which he did. He argues that the Plaintiffs ought to demonstrate that he has been in willful and deliberate disobedience of the court order of 21.2.2005.
4. The 2nd-5th Defendants and the interested parties did not file responses to the application.
5. I have considered the rival arguments as well as the proceedings in the Case 1064 of 2014. In *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] eKLR, the court stated that establishing the Respondent's deliberate failure to comply with an order is one of the tests for establishing contempt by an applicant.



6. I find that the orders of Ransley J only allowed the injunctive orders of 29.3.2004 to the extent that the 1st and 2nd defendants were to carry out civil works on the undisputed portions of land. However, the 1st and 2nd defendants appear to be undertaking works on the disputed properties.
7. Another issue for consideration relates to the passage of time. Injunction and other interim orders are not meant to thrive in perpetuity. The purpose of interlocutory injunctions is to facilitate the chance of the court to do justice, and such injunctions operate as interim measures of protection pending determination of the substantive issues.
8. To this end, the provisions of order 40 rule 6 of the Civil Procedure Rules stipulates as follows:

“Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the court orders otherwise.”
9. J. L. Onguto J elaborated the above point in Maxam Limited & 2 others v Heineken East Africa Import Co. Ltd & 2 others [2017] eKLR as follows:

“I must however also appreciate that Order 40 Rule 6 of the Civil Procedure Rules anticipates that where an interlocutory injunction has been issued on merit, then the suit is to be determined and the parties respective rightsasserted within one year of the interlocutory order being made. The Rule appreciates and seeks to ensure that neither party is placed at an indefinite hardship through an intermediary order. The mischief was to guard against sluggish and dawdling litigants who seek to delay the prosecution of their claims”.
10. From the above legal analysis, the 1st and 2nd defendants cannot be heard to peg their actions on the varied injunction orders that are now close to 20 years old!.
11. Despite the foregoing analysis, I find that in case no.1064 of 2014, the court has also dealt with a contempt application against the two defendants, whereby the court has stated that it now has a sneak preview of the current ground status, where the two defendants had commenced some kind of excavation and pouring of building materials on the ground.
12. Noting that the hearing of this matter is now underway, and being conscious of the ruling given in the sister file 1064 of 2014, I decline to allow the application with no orders as to costs.
13. Instead, I give an order of maintenance of the current status quo. This is simply an ancillary order for the preservation of the situation as it exists in relation to the pending proceedings; See Bakari Shaban Gakere v Mwana Idd Guchu & 3 others [2022] eKLR. For avoidance of doubts, the order entails that no activities of any kind are to be undertaken on the disputed property until this case is heard and determined. To this end, parties should focus on the finalization of the substantive dispute.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF NOVEMBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Mwangi and Angwenyi for 1st and 2nd Defendants

Njuguna and Macharia for 3rd Defendants



Osoro for 14th and 15th Interested Parties

