



Kirobon Farmers Limited v Rono & another (Environment & Land Case 429 of 2016) [2023] KEELC 21636 (KLR) (16 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21636 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 429 OF 2016
LA OMOLLO, J
NOVEMBER 16, 2023**

BETWEEN

KIROBON FARMERS LIMITED PLAINTIFF

AND

SUSAN CHERONO RONO 1ST DEFENDANT

CHEPKORIR RONO 2ND DEFENDANT

RULING

Introduction

1. This ruling is in respect to the 1st Defendant/Applicant's Notice of Motion dated 22nd May, 2023. The Applicant seeks for the following orders:
 1. Spent.
 2. That this Honourable Court be and is hereby pleased to issue summons to Robert Kipkirui Sang, Wilson Kiptoo Leitich Samuel Kimutai Birir, Hosea Parmao Chemweno, Esther Chepkurui Rono, Pauline Cherotich Sang, Ruth Chepkemon Chebochok, Robert Kipkirui Sang, David Kimutai Metet and Paul Kibet Kiplagat, being directors of the Respondent company, to appear before this Honourable Court to show cause why they should not be committed to civil jail for breach of the Court Orders herein issued on 9 June, 2020 and 16 July, 2020.
 3. That this Honourable Court be and is hereby pleased to hold that Robert Kipkirui Sang, Wilson Kiptoo Leitich, Samuel Kimutai Birir, Hosea Barmao Chemweno, Esther Chepkurui Rono, Pauline Cherotich Sang, Ruth Chepkemoi Chebochok, Robert Kipkirui Sang, David Kimutai Metet and Paul Kibet Kiplagat are in contempt of the Court Orders herein issued on 9 June, 2020 and 16 July, 2020.



4. That this Honourable Court be and is hereby pleased to make orders for committal against Robert Kipkirui Sang, Wilson Kiptoo Leitich Samuel Kimutai Birir, Hosea Barmao Chemweno, Esther Chepkurui Rono, Pauline Cherotich Sang, Ruth Chepkemai Chebochok, Robert Kipkirui Sang, David Kimutai Metet and Paul Kibet Kiplagat to civil jail for SIX (6) Months or such period as this Honourable Court may deem fit and just for disobedience of the orders of this Honourable Court variously issued on 9th June, 2020 and 16th July, 2020.
5. Spent.
6. That this Honourable Court makes an order that until the Contemnors purge their contempt to the satisfaction of the Court, the Plaintiff ought not to be heard by this Court or participate in these proceedings.
7. That alternatively, this Honourable Court deals with the Respondent's officials in any manner deemed necessary under the wide and unfettered discretion conferred by the *Contempt of Court Act*.
8. That costs of this suit application be borne by the contemnors.

Factual Background.

2. This matter was scheduled for hearing on 24th May, 2023 but the 1st Defendant/Applicant lodged a contempt application.
3. The Applicant urges this court to hold Plaintiff/Respondents directors in contempt for disobedience of orders issued on 9th June, 2020 and 16th July, 2020.
4. The said orders of 9th June, 2020 and 16th July, 2020 had directed that the status quo of the parcels of land being Molo South/Keringet Block 2/23 (Kirobon) and Molo South/Keringet Block 2/151 (Kirobon) be maintained pending the hearing and determination of the suit.

1st Defendant/applicant's Contention.

5. The 1st Defendant/Applicant gives a summary of the background of this suit and deposes that the suit parcel Molo South/Keringet/Block 2 L.R NO. 11323-Kirobon was bought by her late husband in 1988 from one Joseph Kipruto Chepkwony.
6. She deposes that vide a letter dated 15th August, 2005 the Plaintiff/Respondent requested for approval of fresh plans in respect to the above property. She further deposes that the same was approved by the Physical Planning Officer as well as the District Lands Officer.
7. It is her deposition that a fresh Registry Index Map was issued and vide the survey map, the suit parcel was assigned number 23 initially captured as number 151.
8. It is further her deposition that on 12th June, 2020 the court issued orders for maintenance of the status quo of the suit property and adds that the court further issued similar orders on 16th July, 2020 after breach by the Plaintiff/Respondent.
9. She deposes that the contemnors despite being aware of the said orders have subdivided the suit parcel and are currently in the process of leasing out/selling to third parties. She deposes that the actions by the contemnors undermine the rule of law as well as this court's authority.



10. In conclusion, she deposes that since the issuance of the said orders the contemnors have refused and/or ignored compliance with the orders thus it would be in the interest of justice that the application be allowed.
11. The application is further supported with the affidavit sworn by one Richard Kipngetch a caretaker of the suit parcel.

He reiterates the depositions by the 1st Defendant/Applicant and explains the damage caused by the Plaintiff/Respondent to the suit property to wit cutting down of the mature hardwood trees, effecting change of user from agricultural to comprehensive development and subdividing and selling of the plots to third parties.
12. He deposes that the contemnors are aware of the court orders and that their willful failure to comply with the same amounts to contempt. He adds that their actions undermine the rule of law and this court has the duty to safeguard the rule law through enforcement of strict compliance with its orders.

Response To The Application.

13. The Plaintiff/Respondent filed a Replying Affidavit sworn by one David K.A Metet. The Deponent states that he is one of the Directors of the Respondent company.
14. He deposes that the application is misconceived and an abuse of the court process and is meant to derail the hearing and determination of the matter. He goes on to state that the 1st Defendant/Applicant purports to seek leave to institute contempt proceedings and that before leave has been granted, the application seeks several other prayers.
15. The Plaintiff/Respondent deposes that it is strange that the 1st Defendant/Applicant is complaining about orders issued on the 9th June and 16th July, 2023 after more than three (3) years.
16. He further deposes that the 1st Defendant/Applicant should have immediately filed a substantive application for contempt if she felt that the Plaintiff/Respondent had disobeyed court orders and not wait to file it three years later.
17. It is his deposition that for the Plaintiff/Respondent to be in contempt of court, the 1st Defendant/Applicant has to show that she extracted a court order and served the Plaintiff/Respondent personally.
18. He further deposes that the application seeks orders against 10 Respondents hence vague. He goes on to depose that the application does not mention any specific land parcel.
19. He deposes that the subject matter of the suit is three parcels of land being L.R Molo South/Keringet Block 2/23 (Kirobon) measuring 19.44ha, L.R Molo- South/Keringet Block 2/151 (Kirobon) measuring 2.67ha and L.R Molo South/Keringet Block 2/151 measuring 23.00ha respectively.
20. He deposes that an application for contempt of court cannot be general but must be specific and adds that it must be specific as to a particular parcel of land and that the breach must also be specific.
21. He further deposes that they are not contesting the orders but add that the land parcel claimed by the 1st Defendant/Applicant L.R No. Molo South/Keringet Block 2/151 (Kirobon) measuring approximately 19.44ha does not exist on the ground.
22. He goes on to depose that the 1st Defendant/Applicant does not utilize the said parcel or a portion measuring 6.6 acres but resides in another parcel in Ngata. He also deposes that they have not disobeyed any court order.



23. He contends that L.R No. Molo South/Keringet Block 2/151 (Kirobon) measuring approximately 2.67ha belongs to one David Kipkorir Bett. He also contends that there appears to be two land parcels in the same name and number but in different sizes.
24. The Plaintiff/Respondent deposes that the affidavit sworn by one Richard Kipngetich should be struck out with costs as he is not a party to the suit. He adds that he does not know when the photos annexed were taken and further that the Plaintiff/Respondent has been in occupation of the suit parcel.
25. He further deposes that the surveyor's report was correct in finding that L.R No. Molo South/Keringet Block 2/151 (Kirobon) measuring approximately 23.00ha belongs to the Plaintiff/Respondent and that the parcel claimed by the 1st Defendant/Applicant L.R No. Molo South/Keringet Block 2/151 (Kirobon) measuring approximately 19.442 was never identified on the ground.
26. In conclusion, he deposes that the 1st Defendant/Applicant does not own any parcel in the suit land and therefore no court orders have been breached. He added that the 1st Defendant/Applicant has annexed documents to the application that are not relevant to the application for contempt.

Issues For Determination.

27. The 1st Defendant/Applicant filed her submissions on 25th September, 2023. She gives a brief background of the case and identified the following issues for determination
 - a. Whether the court orders of 9th June, 2020 and 16th July, 2020 were clear and unambiguous and whether the Respondent had knowledge or proper notice of the orders.
 - b. Whether the court orders specified maintenance of status quo on either Molo South Keringet Block 2/23 (Kirobon) and/or Molo South Keringet Block 2/151 (Kirobon) pending determination of the suit herein.
 - c. Whether the court orders of 9th June, 2020 and 16th July, 2020 were deliberately breached by the Respondent.
28. On the first issue for determination, the 1st Defendant/Applicant submits that the court order issued on 9th June, 2020 ordered that the status quo be maintained. She states that the order was anchored on two applications dated 10th October, 2016 and 4th October, 2016. She further submits that the Plaintiff/Respondent knew about the said orders since her counsel was in court when the orders were issued and also confirms that they were aware of the said orders.
29. On the second issue for determination, she submits that the order specified the maintenance of the status quo for the two disputed properties being Molo South/Keringet Block 2/23 (Kirobon) and Molo South/Keringet Block 2/151 (Kirobon). She adds that the ownership dispute is to be determined by the court.
30. On the third and final issue, the 1st Defendant/Applicant submits that it has listed ten directors of the Plaintiff/Respondent's company and cited them for contempt. She further submits that of all the cited directors only one David Kimutai Metet responded via his Replying Affidavit.
31. She further submits that from the Replying Affidavit of Richard Kipngetich, the said David Kimutai is mentioned as having invaded the suit parcel on 8th April, 2023 and supervised the cutting down of trees and carting of timber.
32. The 1st Defendant/Applicant argues that breach of the court orders was occasioned by David Kimutai's willful and deliberate invasion of the suit parcel despite the status quo orders being in place. She argues



that the assertion that the photo was taken before the issuance of the orders require a certificate of electronic evidence to be proven.

33. She added that should this court establish that the other directors breach of the court orders has not been demonstrated, she submits that the breach by one Davide Metet has been proven.
34. In conclusion the 1st Defendant/Applicant relied on Order 40 Rule (3) of the Civil Procedure Rules that provides for consequences of contempt of court.
35. The Plaintiff/Respondent on the other hand filed its submissions dated 22nd September, 2023 on 26th September, 2023. It submits that the instant application by the 1st Defendant/Applicant is devoid of any grounds and prays for numerous orders at once.
36. It submits that the application is misconceived, irregular and an abuse of the court process as the 1st Defendant/Applicant is complaining about orders that were issued three years ago. It added that the 1st Defendant/Applicant failed to demonstrate the disobedience complained of. It further argues that the same application is not specific to which Plaintiff/Respondent is in contempt.
37. It further submits that the application is vague and does not mention any specific land parcel but refers to the suit land in general yet the claim is on three specific land parcels and titles. The Plaintiff/Respondent argues that it did not disobey any court order nor invade any land parcel. It further argues that the land parcel claimed by the 1st Defendant/Applicant does not exist on the ground and that her purported title deed is invade. It submits that they do not know Richard Kipnetich and that he is not a party to this suit thus cannot purport to file an affidavit without the leave of the court.
38. In conclusion, the Plaintiff/Respondent urges this court to dismiss the application with costs.

Analysis And Determination

39. Upon perusal of the Application, Replying Affidavit and Submissions filed in respect of this Application, it is my considered view that one issue is for determination:
 - a. Whether the Plaintiff/Respondent is in contempt of this Honourable Court.
40. Section 5(1) of the *Judicature Act* provides as follows:

“The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.”
41. Section 29 of the *Environment and Land Court* further provides 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”
42. In the judicial decision of *North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjohi* (2016) eKLR the Learned Judge cited the book *Contempt in Modern New Zealand* wherein elements of civil contempt are discussed and stated thus;

“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.”

43. In the instant case, the parties make reference to orders issued on 9th June, 2020 and 16th July, 2020.
44. I have perused the court record and it is not in dispute that orders were given by my brother Hon. Justice Sila Munyao on 4th October, 2017 that the status quo on Molo South/Keringet Block 2/151 (Kirobon) be maintained until the case is concluded.
45. It is also not in dispute that my brother Hon. Justice Mutungi on 7th July, 2020 ordered that the status quo on land parcel Molo South Keringet Block 2/23 (Kirobon) be maintained until the case is determined.
46. The 1st Defendant/Applicant listed all the ten directors of the Plaintiff/Respondent's company and urges this court to find that they are in contempt of the orders as set out in the preceding paragraphs. She alleges that they invaded the suit parcel and cut down mature hardwood trees and demolished the existing structures.
47. I have perused the application and while the 1st Defendant/Applicant alleges that the suit property was invaded, she has failed to specify which of the suit properties was invaded.
48. Further, only one of the directors of the Plaintiff/Respondent one David K. A Metet responded to the application and denied the allegations of contempt. There is no evidence placed before this court to show that the other directors were served or are aware of the orders that were issued by this Honourable Court.
49. The instant application is not clear as to which of the suit properties was invaded and by whom. The 1st Defendant/Applicant has annexed photographs showing that trees have been cut down. I am unable to conclude that the said trees were growing on any of the suit parcels, that they were cut down while growing in either of the suit parcels or that they were cut down by the directors of the Respondent.
50. In *Gatharia K. Mutikika v Babarini Farm Limited* [1985] KLR 227, it was held as follows;

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 extend it to offences which can be said to be quasi-criminal in nature. However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... (Emphasis mine) Recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the party of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject...(Emphasis mine). applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and



or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.

51. In *Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui* [2021] eKLR, the Learned Judge cited with approval the decision of the Indian Supreme Court in *Re: Vinay Chandra Misbra* [(1995) 2 SCC584], whether it was states thus;

The judiciary has a special and additional duty to perform, viz, to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. Dignity and authority of the court has to be respected and protected at all costs.

52. The Learned Judge in *Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui* [2021] (*Supra*) went on to state as follows;

“But even as courts punish for contempt to safeguard the peaceful and development of society and the rule of law, it must be borne in mind that the power to punish for contempt is a discretionary one and should be used sparingly. That is why the court observed in *Carey v Laiken* (*supra*), that if courts were to find contempt too easily, “a court’s outrage might be treated as just so much bluster that might ultimately cheapen the role and authority of the very judicial power it seeks to protect the court’s contempt power should be used cautiously and with great restraint. It is an enforcement power of last resort rather than first resort.”

Disposition.

53. Taking into account the circumstances of this case and the evidence placed before court, I find that the Applicant has not proved that the Respondent is in contempt of the court orders issued on 9th June, 2020 and 16th July, 2020. Consequently, the application dated 22nd May, 2023 is hereby dismissed with costs to the Plaintiff/Respondent.

54. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 16TH DAY OF NOVEMBER, 2023.

L. A. OMOLLO

JUDGE

In the presence of:

Miss Kamau for Muchela for the 1st Defendant/Applicant.

Mr. Gai for the Plaintiff

