



REPUBLIC OF KENYA



**Mundia v Wanjohi & 3 others (Environment & Land Case 502 of 2017)  
[2023] KEELC 22443 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22443 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 502 OF 2017  
LC KOMINGOI, J  
DECEMBER 20, 2023**

**BETWEEN**

**FRANCIS NG'ANG'A MUNDIA ..... PLAINTIFF**

**AND**

**ISAAC GATHUNGU WANJOHI ..... 1<sup>ST</sup> DEFENDANT**

**JACKSON SIMEI NKARU PARTERU ..... 2<sup>ND</sup> DEFENDANT**

**SIMON MOLOMA NKARU ..... 3<sup>RD</sup> DEFENDANT**

**COUNTY LAND REGISTRAR KAJIADO ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. This is the Notice of Motion dated 20<sup>th</sup> February 2023, brought under;  
Order 7 Rule 5 (b) *Civil Procedure Rules*, 2010
2. It seeks Orders:
  1. That this Hon. Court be pleased to expunge from the court records paragraph 9 to 12 of the Plaintiff's Affidavit herein sworn on 23<sup>rd</sup> November 2023 (sic).
  2. That this Hon. Court be pleased to sanction Mr. Joseph N. Murage advocate for committing professional misconduct in connection with the proceedings in this suit.
  3. That Mr. Joseph N. Murage, do apologise to the court for the injury cause to the administration of justice.
  4. That this Hon. Court be pleased to order the Plaintiff to show cause why he should not be punished for committing the contempt of court taking the form of undermining the authority of this Hon. Court.



5. That the costs of this Application be provided for.
3. This application supported by the grounds on its face and in the Supporting Affidavit by Dr. Gibson Kamau Kuria Senior Counsel dated 17<sup>th</sup> July 2023. He avers that Mr. Joseph N Murage in his Affidavit sworn on 23<sup>rd</sup> November 2022 committed professional misconduct by discussing merits of a case and accusing the court of bias whenever adverse orders are issued against him which has undermined the court's authority. Counsel stated that it was contempt of court for an Advocate to draw a false Affidavit that accused him and Justice Gicheru of bias and professional misconduct for discussing the case outside the Court.
4. Counsel went on to state that Mr. Murage accused the court of bias when it delivered a ruling against his client but neither appealed against the ruling nor asked the court to recuse itself. Counsel also stated that the allegations made in paragraphs 9, 10, 11 and 12 were vague because no evidence was adduced to support them. He also added that neither he nor his client were ever summoned by the alleged investigators to give his statement regarding the proceedings of 16<sup>th</sup> February 2022. He went on to aver that being a practicing advocate in Kiambu and Thika, he was aware that there was no ELC judge in Kiambu Town who could handle this matter contrary to paragraph 11 of the said Affidavit.
5. Counsel also stated that he had never discussed this case or any other case with the mentioned Judges and that paragraph 12 of the Affidavit made serious allegation against Justice Gicheru who consequently recused himself from hearing this suit. He went on to state that Mr. Murage had given a false description of proceedings of this suit pointing out that he filed a supplementary list of documents on 17<sup>th</sup> February 2022 with leave of court to ensure that the court had all proceedings relating to this suit. Therefore, information in paragraphs 4 to 11 were false.
6. As such, Mr. Murage together with his client ought to be punished for contempt and professional misconduct as outlined in Section 56 of the [Advocates Act](#) and the offending paragraphs be expunged from court's record.
7. The Plaintiff/Respondent in his response filed a Preliminary Objection and a Replying Affidavit dated 21<sup>st</sup> March 2023.
8. The Notice of Motion was canvassed by way of written submissions.

#### **The Plaintiff/ Respondent's submissions**

9. Counsel submitted that there was no sworn, filed or served Affidavit dated 23<sup>rd</sup> November 2023 and as such an order to expunge a non-existent document cannot stand. Counsel went on to submit that since the instant application was based on making false statements and / or affidavits and abuse of administration of justice, the Applicant ought to have sought leave of court before filing the application citing *Christine Wangari Chege vs Elizabeth Evans & Others*.
10. Counsel added that the Advocate Mr. Joseph Murage not being party to the proceedings could not defend himself since there was no evidence that he was personally served with the application. Indicating that Section 60(1) of the [Advocates Act](#) established a Disciplinary Tribunal to deal with cases of professional misconduct as was held in *Republic vs Advocates Disciplinary Tribunal & 2 others exparte Thomas Letangule & 3 others [2015] eKLR* and as such had not adhered to the doctrine of exhaustion citing [Geoffrey Mutbinja Kabiru & 2 others vs Samuel Munga Henry & 1756 others \[2015\] eKLR](#).



11. Counsel submitted that the instant application was an attempt to address the issue of recusal which had already been determined and concluded. As such, court cannot sanction the Plaintiff for proceedings already concluded.

### **The 1<sup>st</sup> Defendant / Applicant's Submissions**

12. Counsel submitted that the Preliminary Objection was incompetent since it was based on disputed facts citing *Mukisa Biscuits Limited vs West End Limited (1969) EA 696* and went on to buttress that his application was merited and had been proved on a balance of probabilities and should be allowed as prayed.

### **Analysis and Determination**

13. I have considered the application, the affidavit in support the response thereto, the written submissions and the authorities cited. The issues for determination are:

- i. Whether the application dated 20<sup>th</sup> February 2023 is merited.
- ii. Who should bear costs of this application?

14. Dr. Gibson Kamau Kuria Senior Counsel seeks to cite counsel for the Plaintiff Mr. Joseph Murage for contempt of court and professional misconduct as outlined in the summary above. Counsel for the plaintiff Mr. Murage has contested the application stating that the issues raised in the application had already been dealt with and that if there was any professional misconduct, then the Applicant had not exhausted the established dispute resolution mechanism.

15. While courts retain the discretionary power to hold individuals in contempt, it is crucial to exercise this discretion judiciously, to avoid arbitrary contempt citations. This is because such proceedings are quasi-criminal in nature and should only be pursued when the defiance is unequivocal and leaves no doubt in the mind of the judicial officer.

16. It has been stated that contempt is outright disobedience of court orders that is punishable. The Supreme Court in *Republic v Ahmad Abolfathi Mohammed & another [2019] eKLR* at paragraph 28 stated:

“...There is no doubt that an act in contempt of the Court constitutes an affront to judicial authority; and the Court has the liberty and empowerment to mete out penalty for such conduct, in a proper case. The object is, firstly, to vindicate the Court’s authority; secondly, to uphold honourable conduct among Advocates, in their standing as officers of the Court; and thirdly, to safeguard its processes for assuring compliance, so as to sustain the rule of law and the administration of justice...”

17. The Court of Appeal in *Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 others [2018] eKLR* went on to state:

“... It is trite that to commit a person for contempt of court, the court must be satisfied that he has willfully and deliberately disobeyed a court order that he was aware of. That is made absolutely clear by section 4 of the *Contempt of Court Act* and the ruling of the Supreme Court in *Republic v. Ahmad Abolfathi Mohammed & Another (supra)*. Secondly, as this Court emphasized in *Jihan Freighters Ltd v. Hardware & General Stores Ltd* and in *A.B. & Another v. R. B. [2016] eKLR*, to sustain committal for contempt of court, the order of the



court that is alleged to have been deliberately disobeyed must be clear and precise so as to leave no doubt as to what a party was supposed to do or to refrain from doing...”

18. Associating myself with the above holdings, I find that the issue of contempt has not been proved to the required standard and the application dismissed with no orders to costs.
19. While that might be the case, I have gone through the instant application and the application referred to as well as court proceedings and I have taken time in coming up with this determination. This is because of the accusations, counter accusations and allegations that adversely mention judicial officers' names without evidence.
20. It is quite unfortunate for Advocates who engage in actions that tarnish the reputation and integrity of judges. Advocates play a crucial role in upholding the standards of legal conduct and respect for the judiciary. Any attempt to taint or besmirch the name of a judge not only undermines the authority of the court but also erodes public trust in the judicial system.
21. In conclusion I find no merit in this application and the same is dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20<sup>TH</sup> DAY OF DECEMBER 2023.**

**L.KOMINGOI**

**JUDGE.**

