



**Sikalieh (Suing as the Chairman of Karen Langata District Association)
v Karuna Holdings Limited & 6 others (Environment & Land Petition
E060 of 2022) [2023] KEELC 22501 (KLR) (18 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22501 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND PETITION E060 OF 2022

EK WABWOTO, J

DECEMBER 18, 2023

**IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS AND FUNDAMENTAL
FREEDOMS UNDER ARTICLES 10,42, 66, 69 & 70 OF THE CONSTITUTION**

BETWEEN

**SAMORA SIKALIEH (SUING AS THE CHAIRMAN OF KAREN LANGATA
DISTRICT ASSOCIATION) PETITIONER**

AND

KARUNA HOLDINGS LIMITED 1ST RESPONDENT

MARULA MANOR LIMITED 2ND RESPONDENT

CHAKULA TAYARI ENTERPRISES 3RD RESPONDENT

THE NAIROBI CITY COUNTY 4TH RESPONDENT

**THE COUNTY EXECUTIVE COMMITTEE MEMBER, NAIROBI CITY
COUNTY 5TH RESPONDENT**

**THE CHAIR, NAIROBI CITY COUNTY ALCOHOLIC DRINKS AND
LICENSING BOARD 6TH RESPONDENT**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 7TH
RESPONDENT**

RULING

1. On 6th July, 2023, this Court extended its interim orders which had been granted on 21st December, 2022. The said orders were to the effect that the 1st, 2nd and 3rd Respondents were restrained from undertaking their operations and or activities in a manner that contravenes the provisions of the *Environment Management and Coordination (Noise and Excessive Vibration Pollution) (Control)*



- Regulations, 2009 and in particular from exceeding the following permissible noise levels – Day D6 (A), Indoor 45, Outdoor 50 and Night d6 (b), Indoor 35 and Outdoor 35 pending the hearing and determination of the Petition. The 1st Respondent was also restrained from burning of trash, toxic waste and Causing of Oil Spillage in the property known as L.R No. 1160/225 or outside of the said property and the adjacent reserve. The 4th, 5th and 7th Respondents were also directed to monitor and ensure compliance of the orders.
2. Subsequently thereafter, *vide* an application dated 27th July, 2023, the Petitioner moved this Court seeking the following orders:
 - a. Spent...
 - b. Issuance of an injunction restraining the 1st and 2nd Respondents, their servants, agents or otherwise howsoever from permitting any social, corporate, or wedding events and trade affairs on the suit properties Land Reference No. 1160/30 and Land Reference No. 1160/225 for contravening the above referred Order.
 - c. Production of the license issued to the 1st and 2nd Respondents under the *Environmental Management and Coordination (Noise and Excessive Vibration Pollution) Control Regulations*, 2009 for the event that took place on 22nd July, 2023 that lead to excess noise pollution in breach of court order.
 - d. Summons to Udi Mareka Gecaga, Stephen Kigima Gitimu and Joseph Njoroge Fredrick to show cause for their contemptuous behavior.
 - e. Order to the 1st and 2nd Respondents to pay for the costs of officials from the 5th and 7th Respondents to monitor future events for compliance.
 3. The application was supported by affidavits sworn by Samora Sikalieh, Dr. Allan Pamba, Dr. Marie Louse Cantamessa, Ferina Keshavjee, Fitzgerald Oyoo, Rosemary Sheelagh Grammaticas and Vera Steury.
 4. The application was opposed by the 1st and 2nd Respondents. The 1st and 2nd Respondents filed grounds of opposition dated 17th August, 2023 and the affidavits of Udi Mareka Ge Caga, Stephen Kigima Gitimu, Joseph Njoroge Fredrick and Jonathan Mbuchucha all sworn on 17th August, 2023.
 5. It was the Petitioner’s contention that the 1st and 2nd Respondents hired out the ground for a private party on 22nd July, 2023, several buses arrived with revelers attending the function, the DJ played excessively loud music, accompanied by shouting through the microphone and that the noise was so disruptive that it could be heard more than a kilometer away from the source, affecting residents in Ololua Ridge, Acacia Drive, and halfway down Mbagathi Ridge.
 6. Numerous calls were made to the Assistant County Commissioner for intervention, and the event ended at 10.30 p.m and after the event, noisy loading and off-loading of equipment into a corrugated iron storage shade further inconvenienced the neighbourhood. The excessive noise adversely affected elderly, sick persons, and children living in the vicinity.
 7. It was also contended that the Mbagathi Ridge Residents’ Association authored a protest letter addressed to the Chairman of Karen Langata District Association complaining of the nuisance and apparent contempt of the 1st and 2nd respondents.
 8. It was averred that nuisance has become perennial to the effect that the 1st to the 3rd Respondents have continued to conduct events and activities with wanton disregard for provisions of the *Environment Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations* 2009



- by exceeding the permissible noise levels. The 4th, 5th and 7th Respondents have failed to monitor and ensure compliance with the order of this Court of 21st December, 2022 and extended on 6th July, 2023.
9. The Petitioner in the written submissions dated 7th August, 2023 submitted on the following four issues:
 - i. Whether an order dated 21st December, 2022 and extended on 6th July, 2023 was made.
 - ii. Whether service was effected or whether the 1st and 2nd Respondents were made aware of the orders referred to above.
 - iii. Whether the order was clear, unambiguous and unequivocal.
 - iv. Whether the 1st and 2nd Respondents are in contempt of the Court order.
 10. It was submitted that the orders issued herein was clear and unambiguous and that the Respondents were served with the said order which was also brought to the attention of their advocates.
 11. It was also submitted that the 1st and 2nd Respondents are guilty of contempt and the contempt application should be allowed as prayed. Reliance was made to Section 29 of the Environment and Land Court Act and the following cases; Richard Otieno & 9 others -vs- Michael Otieno Wagude & Another [2022] eKLR, Michael Sistu Mwaura Kamau -vs- Director of Public Prosecutions & 4 others [2018] eKLR, Econet Wireless Kenya Ltd -vs- Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828, Teachers Service Commission -vs- Kenya National Union of Teachers & 2 others [eKLR and Asbock Labshanker Doshi & Another -vs- County Government of Mombasa & 3 others [2021] eKLR.
 12. Learned Counsel S.C. Allen Gichuhi also made oral submissions on behalf of the Petitioner and urged the Court to allow their application for contempt.
 13. The 1st and 2nd Respondents filed written submissions dated 1st September, 2023. Learned S.C. Kiragu Kimani also made oral submissions on their behalf in opposing the application.
 14. It was submitted that the Petitioner's complaint is with regard to a private event that took place on 22nd July, 2023 on the 1st Respondent's property situated on L.R. No. 1160/223 (Marula Manor, Karen). The event was carried out in compliance with the order of 21st December, 2023 and that the Petitioner has not provided any evidence of his allegations. The burden was on him to demonstrate how the order was breached. Reliance was made to the Supreme court case of Communications Commission of Kenya & 5 others -vs- Royal Media Services Limited & 5 others [2014] eKLR held:

“Although Article 22(1) of the Constitution gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Annarita Karimi Njeru -vs- Republic [1979] KLR the necessity of a link between the aggrieved party, the provisions of the Constitution alleged to have been contravened, and the manifestation of contravention or infringement. Such a principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.”
 15. It was contended that, without evidence of noise pollution, the Court should not make conclusions based on assumptions. It was also submitted that the 1st Respondent has provided readings from a sound meter (Certified and calibrated by a NEMA lead Environment Expert) to demonstrate that the



- sound levels emitted from the property on 22nd July, 2023 did not breach the orders of 21st December, 2022.
16. It was further submitted that the Petitioner's case does not meet the test set out for contempt application. It was also argued that the application is an abuse of the Court Process having been made in bad faith.
 17. The 1st and 2nd Respondents also submitted that no special Circumstances have been exhibited necessitating the grant of mandatory orders sought. It was argued that a mandatory injunction may only be issued in the dearest of cases and further that the 1st and 2nd Respondents have provided evidence that there was no emission of noise in excess of the statutory limits and being aware of the Court order given on 21st December, 2022 and were keen to comply with its terms and hence, it was therefore not necessary to apply for the licence under *EMCA (Noise and Excessive Vibration) (Control) Regulations*, 2009. The Court was urged to strike out the application with costs to the 1st and 2nd Respondents.
 18. The Court having considered the applications and submissions made, the two issues for consideration are:
 - i. Whether Udi Mareka Gecaga, Stephen Kigima Gitimu and Joseph Njoroge Fredrick should be summoned to show cause for being in contempt of the orders of this court.
 - ii. Whether the Petitioner has made out a case for grant of the reliefs sought in the application.
 19. The law relating to contempt of this court is found in section 5 of the *Judicature Act*, section 29 of the *Land Act* and The Practice Directions on Proceedings in the Environment and Land Court.
 20. Section 5 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 such power shall extend to upholding the authority and dignity of subordinate courts.”
 21. Section 29 of the *Environment and Land Court Act* provides as follows:

“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.”
 22. In the case of *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR, the Learned Judges of Appeal went to great lengths in tracing the foundations of law on contempt as practiced in Kenya. They state;

“*Christine Wangari Gachege -vs- Elizabeth Wanjiru Evans & 11 Others*, when dealing with the same issue concerning the applicability of English Law of contempt in our Courts had this to say:

“Following the implementation of the famous Lord Woolf's *Access to Justice Report*, 1996', the Rules of the Supreme Court of England are gradually being replaced with the *Civil Procedure Rules*, 1999. Recently on 1st October, 2012 the *Civil Procedure (Amendment No. 2) Rules*, 2012 came into force and part



81 thereof effectively replaced Order 52 of the Rules of the Supreme Court of England in its entirety.”

23. For what it is worth, this court has demonstrated that the willful disobedience of any judgment, decree, direction, order, or other constitutes contempt of court. In *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] eKLR the Learned Judge cited with approval excerpts from the book “*Contempt in Modern New Zealand*”. He states as follows;

“It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities.

Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand* who succinctly stated:-

“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) that:-

- (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.”

In effect, an applicant seeking to cite another for contempt is held to very high standards of proof, higher than in civil cases. He must prove the following; that there is in existence of an order/ judgement that is clear unambiguous and binding, that the Defendant/Respondent has knowledge of the said order/ Judgement, that the Defendant/Respondent has acted in breach of the said orders and that the Defendant/Respondent’s conduct is deliberate.

24. The application is seeking inter alia prayers that Udi Mareka Gecaga, Stephen Kigima Gitimu and Joseph Njoroge Fredrick be summoned to show Cause for their contemptuous behavior.
25. Looking at the circumstances in the present application, neither party disputed the existence of the orders issued by this Court and as such, the said orders were clear and unambiguous.
26. On the second element on the existence of knowledge and notice of the order, it is also evident and was even acknowledged by the 1st and 2nd Respondents that they were aware of the said orders.
27. On the third element on whether the 1st and 2nd Respondents were actually in breach of the said order, I have taken the liberty to peruse the annexures filed on behalf of the 1st and 2nd Respondents and it is evident that from the readings of the calibrated and certified noise meter, the sound levels emitted from the property on 22nd July, 2023 did not exceed the statutory permitted noise decibels. The affidavit of Stephen Kigima Gitimu, Joseph Njoroge Fredrick and Jonathan Mbuha indicated that the noise levels for the event held on 22nd July, 2023 did not exceed 50 decibels which was the permitted statutory noise



levels before 8 pm. In the circumstances, it is the finding of this Court that the 1st and 2nd Respondents were not in breach of the orders.

28. The Petitioner also sought for grant of an injunction orders restraining the 1st and 2nd Respondents from undertaking any events on the suit properties. However, this Court having found that there was no breach of its earlier orders, there is no basis in granting the other reliefs sought in the application.
29. In view of the foregoing, this Court is not satisfied that the Petitioner has met the threshold for grant of the orders sought and in the circumstances the application dated 27th July, 2023 is hereby dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18TH DAY OF DECEMBER, 2023.

E. K. WABWOTO

JUDGE

In the presence of:

Mr. Otieno h/b for Mr. Allen Gichui S.C for the Petitioner.

Ms. Sirawa h/b for Mr. Kiragu Kimani S.C for the 1st and 2nd Respondents.

