



REPUBLIC OF KENYA



**Kiuna v Mubea & 2 others (Environment & Land Case 32 of 2020)
[2023] KEELC 22407 (KLR) (14 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22407 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 32 OF 2020
LA OMOLLO, J
DECEMBER 14, 2023**

BETWEEN

THOMAS NJUGI KIUNA PLAINTIFF

AND

SAMMY KARINGA MUBEA 1ST DEFENDANT

THE NAKURU DISTRICT LAND REGISTRAR 2ND DEFENDANT

THE HONOURABLE ATTORNEY GENERAL 3RD DEFENDANT

RULING

Introduction

1. This ruling is in respect of the Plaintiff/Applicant's Notice of Motion application dated 21st June, 2023.
2. The said application is expressed to be brought under Order 40 Rule 3 of the [Civil Procedure Rules](#), Section 1A, 1B and 3A of the [Civil Procedure Act](#), Section 4(1)(A), 5, 27 of the [Contempt of Court Act](#) 2016.
3. The Plaintiff/Applicant seeks the following orders;
 - a. Spent
 - b. That the 2nd Defendant herein be committed to civil jail for a term of six months for contempt of court for having deliberately disobeyed orders of this court issued on 21st day of July, 2022.
 - c. That in the alternative this honorable court do issue summons against the 2nd Defendant to show cause why he should not be committed to civil jail for disobeying a court order and any other relief that this court may issue geared towards protecting the dignity of this Honorable court.



- d. That cost of this application be borne by the Defendants herein.
4. The application is based on the grounds on its face and supported by the affidavit of Thomas Njugi Kiuna. The supporting affidavit is sworn on 21st June, 2023.

Factual Background.

5. The Plaintiff/Applicant commenced the present proceedings vide the Complaint dated 25th March, 2020 where he sought the following prayers;
 - a. An order of injunction restraining the 1st Defendant either by himself, servants and/or agents from entering, alienating, selling, transferring, leasing, disposing and/or interfering in any manner whatsoever with the property known as Nakuru Municipality Block 17/97.
 - b. A declaration that the Plaintiff is the rightful owner of Nakuru Municipality Block 17/97.
 - c. Cancellation, revocation or annulment of the certificate of lease Nakuru Municipality Block 17/97 issued to the 1st Defendant and the same registered to the Plaintiff.
 - d. In the alternative and without prejudice to the above prayers sought compensation to the Plaintiff at market rates by the Defendants herein.
 - e. Cost and interests of this suit.
 - f. Any other relief that this honorable court may deem fit and just to grant.
6. The suit was heard and on 21st July, 2022, the court delivered its judgement. The terms of the judgment are as follows.
 - a. A declaration is hereby issued that the Plaintiff is the rightful owner of Nakuru Municipality Block 17/97.
 - b. The Land Registrar, 2nd Defendant, shall rectify the register of land parcel No. Nakuru Municipality Block 17/97 by deleting the 1st Defendant's name and restoring the name of the Plaintiff.
 - c. An order of permanent injunction is hereby issued restraining the 1st Defendant either by himself, servants and/or agents from entering, alienating, selling, transferring, leasing, disposing and/or interfering in any manner whatsoever with the property known as Nakuru Municipality Block 17/97.
 - d. The Plaintiff shall have costs of this suit and interest thereon from the date of Judgment until payment in full.
7. The application under consideration first came up for hearing on 29th June, 2023 when the Plaintiff/Applicant was directed to serve the Defendants/Respondents with the application.
8. On 11th October, 2023 the court directed that the application be heard by way of written submissions and was reserved for ruling on 19th October, 2023.

The Plaintiff/Applicant's Contention.

9. The Plaintiff/Applicant contends that on 18th May, 2020, his advocates on record filed the present matter.



10. The Plaintiff/Applicant also contends that on 21st July, 2022 the court delivered its judgement where he was declared the rightful owner of land parcel No. Nakuru Municipality Block 17/97 and the 2nd Defendant/Respondent ordered to amend the register by deleting the name of the 1st Defendant/Respondent and replacing it with his name.
11. The Plaintiff/Applicant further contends that he instructed his advocates on record to lodge the said decree with the Lands Registry Nakuru.
12. It is his contention that when his advocates went to lodge the decree for registration, they were informed by the Lands Office that the record could not be traced.
13. It is also his contention that his Advocates followed up and the records were traced before they disappeared again.
14. It is further his contention that his Advocates made another application for booking on 9th April, 2023. He thereafter made several trips to the Lands Registry but he was not able to meet with the Land Registrar.
15. The Plaintiff/Applicant contends that he has been advised by his Advocates that the record is clear on what the Land Registrar ought to do but instead the Land Registrar has been giving false information and making absurd demands.
16. The Plaintiff/Applicant also contends that the 2nd Defendant/Respondent has deliberately and willfully refused to rectify the register as instructed.
17. The Plaintiff/Applicant further contends that the 2nd Defendant/Respondent is in direct violation of the court's order and so he seeks that the court intervenes by granting the orders sought so that the suit property can be restored to his name.
18. It is his contention that unless the orders sought are granted, the dignity, honor and authority of the court will be undermined and eroded in the eyes of right-thinking members of society who are likely to hold the court in public ridicule thereby defeating the administration of justice.
19. He ends his deposition by stating that he will continue to suffer great prejudice if the application is not allowed as he is not able to economically gain from the land and use it as security to take a loan from the bank for his use.
20. Despite service, the 2nd Defendant/Respondent did not file a response to the application.

Issues for Determination.

21. The Plaintiff/Applicant filed his submissions on 18th October, 2023 while the 2nd Defendant/Respondent did not file any submissions.
22. The Plaintiff/Applicant relies on the judicial decisions of *Jihan Freighters Limited v Hardware & General Stores Limited* [2015] eKLR, *North Tetu farmers Co. Ltd v Joseph Nderitu Wanjohi* [2016] eKLR, *Sheilla Cassat Issenberg & another v Antony Macharia Kinyanjui* [2021] eKLR and submits that the orders of the court issued on 21st July, 2022 were clear but the 2nd Defendant/Respondent chose to ignore them.
23. The Plaintiff/Applicant also submits that the 2nd Defendant/Respondent has disobeyed the court orders issued on 21st July, 2022 which has caused great injustice to him.



24. The Plaintiff/Applicants concludes his submissions by seeking that the court summons the 2nd Defendant/Respondent to show cause why he should not be committed to civil jail.

Analysis and Determination.

25. After considering the application and the submissions, the twin issue that arises for determination are;

- a. Whether the 2nd Defendant/Respondent is in contempt of this Honorable court.
- b. Whether the 2nd Defendant/Respondent should be committed to civil jail or whether he should be issued with a notice to show cause why he should not be committed to civil jail.

26. 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.”

27. 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.”

28. In *North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjobi* (2016) eKLR the Learned Judge cited the book *Contempt in Modern New Zealand* wherein elements of civil contempt are discussed and 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.”

29. The Plaintiff/Applicant in the present matter seeks that the 2nd Defendant/Respondent be found to be in contempt of the court orders that were issued on 21st July, 2022.

30. The Orders issued on 21st July, 2022 required the 2nd Defendant/Respondent to rectify the register for land parcel No. Nakuru Municipality Block 17/97 by deleting the name of the 1st Defendant and restoring the name of the Plaintiff.

31. The Plaintiff/Applicant has annexed to his supporting affidavit a copy of the green card for land parcel No. Nakuru Municipality Block 17/97 which shows that on 30th November, 2007, the 1st Defendant/Respondent was registered as the owner of the suit property.



32. The Plaintiff/Applicant has also annexed an application for registration dated 24th August, 2022 which shows that a court order was filed for registration over land parcel No. Nakuru Municipality Block 17/97.
33. The application bears a stamp of 31st August 2022 and has the following remarks made on the face of it;
- “Njogu, advise party to gazette reconstruction card of the card in the Defendants name expunged. (Sic)”
34. Another application for registration is annexed that is dated 19th April, 2023. It indicates that it is for re-submission of a court order over land parcel No. Nakuru Municipality Block 17/97. It also bears a stamp dated 19th April, 2023 and on the face of it has the following remarks, parts of which are not legible;
- “Applicant to appear before the LR. Card N/A as par the court and present fresh....for... (Sic)”
35. From the documents annexed to the Plaintiff/Applicant’s supporting affidavit, it is clear that the Plaintiff/Applicant presented the court order issued on 21st July, 2022 to the Land Registrar.
36. The application for registration dated 19th April, 2023 indicates that the Land Registrar required the Plaintiff/Applicant to appear before him and present some documents.
37. The Plaintiff/Applicant has not explained whether he appeared before the Land Registrar as indicated and whether he presented the said documents.
38. In *Gatharia K. Mutikika v Baharini 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...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...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.
39. From the applications for registration annexed to the Plaintiff/Applicant’s supporting affidavit, it would seem that the Applicant was given certain directions by the 2nd Defendant/Applicant on the two occasions that he filed an application. There is no mention, by the Applicant, of the said directions and whether they were complied with.



40. The Court in *Sheilla Cassat Issenberg & another v Antony Macharia Kinyanjui* [2021]eKLR held 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.” (Emphasis is mine)

41. Given that it is not clear whether the Plaintiff/Applicant complied with the directions of the Land Registrar, it is my view that the Plaintiff/Applicant has not demonstrated that the 2nd Defendant/Applicant willfully refused to abide by the orders of the court.

Disposition.

42. The upshot of the foregoing is that the Plaintiff/Applicant’s application dated 21st June, 2023 lacks merit. Consequently, the said application is hereby dismissed with no order as to costs.

43. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 14TH DAY OF DECEMBER, 2023

L. A. OMOLLO

JUDGE.

In the presence of:

Miss Kamau for the Plaintiff/Applicant.

No appearance for the Defendants/Respondents.

