



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT KWALE**  
**ELC NO 96 OF 2021**  
**(FORMERLY MSA ELCC NO. 185 OF 2020)**

JUMA HAMISI RANJIRA.....1<sup>ST</sup> APPLICANT  
OMAAR JUMA RANJIRA.....2<sup>ND</sup> APPLICANT  
YUSSUF OMAR RANJIRA.....3<sup>RD</sup> APPLICANT  
JUMA OMAR RANJIRA.....4<sup>TH</sup> APPLICANT

VERSUS

AMINI JUMA RANJIRA.....1<sup>ST</sup> RESPONDENT  
HASSAN FUNDI CHIDZUGA.....2<sup>ND</sup> RESPONDENT  
MWANAPILI CHONJE NYAWA.....3<sup>RD</sup> RESPONDENT  
LEAKEY NGEETI MUTUA.....4<sup>TH</sup> RESPONDENT  
SHUKRANI ABDALLA DAIDO.....5<sup>TH</sup> RESPONDENT

**RULING**

**BACKGROUND**

1. The application before this court for ruling was brought vide a Notice of Motion dated 18/5/2021 and filed on 20/5/2021 where the following prayers were sought;

- a) Spent
- b) That this Honourable court be pleased to order that the 1<sup>st</sup> Respondent Amini Juma Ranjira be summoned to attend court on the next hearing date of this application to show cause why he should not be committed to civil jail for a term not exceeding six [6] months.
- c) That the honourable court be pleased to order that the 1<sup>st</sup> Respondent Amini Juma Ranjira be committed to civil jail for a term not exceeding six [6] months for disobeying the court order issued on 23/11/2020 and 22/2/2021 and to consequently purge the disobedience of the court order.
- d) That the costs of this application be borne by the 1<sup>st</sup> Respondent.

2. The application was supported by the grounds on the face of it and further by the supporting affidavit sworn by the 1<sup>st</sup> Applicant on 18/05/21 on behalf of the rest of the Applicants. It is the Applicant/Plaintiffs case that he is the owner of the original plot No.Kwale/Kombani Settlement Scheme/354. The same was subsequently subdivided divided into Plot Nos. 2514& 2515 and 2480 and Plot No. Kwale/Kombani Settlement Scheme/356. The matter came up before court as recent as 25/2/2021 when the Court reminded the 1<sup>st</sup> Respondent of the court

orders issued on 23/11/2020. The said orders were to the effect that the status quo of the suit property at the time of hearing was to prevail.

3. The Applicant further deposed that despite the said order to maintain status quo being in place the 1<sup>st</sup> respondent had proceeded to encroach on the suit property by cutting down several coconut trees and delivering construction material on the ground. He exhibited photographs to this effect. Marked..... As a result, the 1<sup>st</sup> Applicant was in fear of being greatly prejudiced and of suffering irreparable loss and damage if the 1<sup>st</sup> Respondent was to be left at liberty to interfere with the suit property.

4. The application was opposed through the replying affidavit sworn by the 1<sup>st</sup> Respondent filed on 1/11/2021. He stated that he had not encroached on the disputed plot and that the photos produced by the Applicants were not of the plot he lived neither were they on the disputed plot. Further that he had reported intrusion on his plot at the Kombani Police Station and the same was recorded as OB No 05/21/12/2020 and the said report had been filed after the applicant filed the present suit before court. That he had never been interested in the subject matter before court and the application before court was based on vendetta and malice and ought to be dismissed with costs by the court.

## **SUBMISSIONS**

5. This court on 27/10/21 directed that the application be disposed of by way of written submissions.

### **Applicant's submissions**

6. The Applicant's filed submissions dated 8/11/2021 on 10/11/2021. In the submissions Counsel for the Plaintiff referred to this court proceedings of 23/11/2020 when the court upon hearing of the applicant's application dated 9/10/2020 issued directions that the status quo prevailing on the suit property was to be maintained. The matter was then referred for court annexed mediation. It is pointed that on 20/12/2020 the 1<sup>st</sup> Respondent with the intention of constructing a house, cut down several coconut trees, and delivered construction material on the suit property. This prompted the 1<sup>st</sup> Applicant to file an application dated 2/2/2021 for the 1<sup>st</sup> Respondent to be held in contempt. Further that during the hearing of the application on 25/02/21 the same was held in abeyance on the undertaking of Counsel for the 1<sup>st</sup> Respondent to warn his client on the consequences of disobeying court orders and that status quo shall be maintained.

7. Counsel for the 1<sup>st</sup> Applicant submitted that despite the above the 1<sup>st</sup> Respondent has continued to intentionally disobey the orders of the court prompting the filing of the current application.

8. Counsel identified two issues for determination. Whether the 1<sup>st</sup> Respondent is in contempt of the court order dated 23/11/2020 and 25/2/2021 and Whether the 1<sup>st</sup> Respondent should be punished for contempt of court.

### **Whether the 1<sup>st</sup> Respondent is in contempt of the court order dated 23/11/2020 and 25/2/2021**

9. Referring to Black's Law Dictionary 9<sup>th</sup> edition Counsel emphasized that contempt is conduct that impairs the fair and efficient administration of justice. Further reference was made on Section 5 of the Judicature Act which confers jurisdiction on superior courts to punish for contempt and Order 40 Rule [3] of the Civil Procedure Rules [2010] on provisions of punishment for disobedience of court orders. Reliance was placed upon the case of **Shimmers Plaza Limited V National Bank of Kenya Limited [2015]** where the importance of obeying court orders was emphasized.

10. In addition Counsel quoting from the book 'Contempt in Modern New Zealand' identified 4 essential elements to be proved to make a case for civil contempt 1) The terms of the order [or injunction or undertaking] were clear and unambiguous and were binding on the defendant 2) The defendant had knowledge of or proper notice of the term of the order 3) The defendant has acted in breach of the terms of the order and 4) The defendant conduct was deliberate.

11. It was submitted that there is no contention from the 1<sup>st</sup> Respondent that the orders of 23/11/2020 were clear or unambiguous. That the same were even restated on 25/2/2021 for the parties benefit and hence the first condition had been met. Relying on the case of **Shimmers Plaza Limited V National Bank of Kenya Limited** cited before, Counsel further urged that where a party is represented by an advocate, the party is deemed to have knowledge of a court order if its advocate is aware of it. Consequently, the 1<sup>st</sup> Respondent had knowledge of the court order and the second condition has been met. Despite being aware of the court order the 1<sup>st</sup> Respondent had gone ahead to cut down trees on the suit property and to deliver building materials on it, the said actions upset the status quo of the suit and in conclusion the Applicants had demonstrated that the 1<sup>st</sup> Respondent is in contempt of the court order of 23/11/2020 and 25/2/2021.

### **Whether the 1<sup>st</sup> Respondent should be punished for contempt of court.**

12. It was further contended that the 1<sup>st</sup> Respondent's actions amount to an injustice visited upon by the Applicant. That obedience of court orders was at the core of the rule of law in any democratic society and breaching of the same eroded confidence of the court and warrants punishment. The case of **African Management Communications International Ltd V Joseph Mathenge Mugo and Another** was relied upon where it was held that a court order binds all and the reason courts have power to punish for contempt is to safeguard the law and administration of justice which is normally threatened when one is in contempt of court.

13. The Applicant asked for the 1<sup>st</sup> Respondent to be held in contempt of the mentioned court orders and for the application to be allowed wholly.

## **1<sup>st</sup> Respondent's submissions.**

14. The 1<sup>st</sup> Respondent filed their submissions on 18/11/2021 dated 15/11/21. It is denied in the submissions that the 1<sup>st</sup> Defendant/Respondent had encroached on the disputed plot. It was pointed that the photographs taken by the Applicant were of a different plot adjacent to the subject matter. According to the 1<sup>st</sup> Defendant he had indeed prior to the filing of this case by the Applicants, reported the 2<sup>nd</sup> Applicant's intrusion in his plot at Kombani Police Base. He provided the OB number thereof.

15. Counsel argued that the application for committal to civil jail was actuated by vendetta based on a strong desire by the applicants to deny the 1<sup>st</sup> Respondent his right to enjoy his property.

## **ANALYSIS AND DETERMINATION**

16. I have considered the application, supporting affidavits and the rival submissions by the parties. I have also referred to the proceedings of this matter from the beginning to the current stage. In my view the issue that requires determination by this court is **Whether the orders made on 23/11/2020 and 25/2/2021 have been violated by the 1<sup>st</sup> Defendant.**

**17. The present application is on disobedience and disregard of the orders of this court made on 23/11/2020 and 25/2/2021.** I will shortly set the record straight.

**18. This Court draws its powers** to punish litigants and persons that are in contempt of its orders under the provisions of **Section 5 (1)** of the Judicature Act which reads; -

*“5. (1) 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’.*

19. **On 12/10/20** - the application for injunction dated 9/10/20 was certified urgent however interim orders were not granted and the court (Munyao J) directed the same be served for inter parties hearing on 10/11/20. On the said 10/11/20 Ms. Onyango for the applicants prayed to the court that interim orders be granted in terms of prayer 2 of the said application. This was on the basis of admission of subdivision and sale in their replying affidavit.

Mr. Birir Counsel for the Defendants opposed the application. He however noted that *‘the status quo can be maintained...My clients undertake not to transfer the property’.*

The court at this juncture observed the close relationship and family ties between the parties and proposed mediation. Counsels agreed whereupon the court ordered that the matter be mentioned before the Deputy Registrar on 23/11/2020 for directions on mediation and then for Mention on 25/02/2021 before the court to assess progress of the mediation. The court further directed **‘In the meantime, the status quo be maintained.’**

20. **On 23/11/2020-** in her submissions (see paragraph 15) Counsel for the applicant refers to the orders of 23/11/2020 which were not contested by the 1<sup>st</sup> Respondent to be unclear and unambiguous. The Application also refers to the orders of 23/11/2020. Counsel further submits that the said orders were restated on 25/02/21. I have perused the court file and there are no proceedings in the court file to show what transpired on 23/11/20. However, I note it is possible that Counsel was referring to the orders made on 12/10/20. I accordingly under the powers conferred upon this court by Section 100 of the Civil Procedure Act, amend this error apparent on the face of the record. I will then go to the proceedings of 25/02/21 to confirm how the said orders were restated. The record states as follows; -

25/2/2021

**Before Munyao Sila**

**Court Assistant;Wilson Rabongo**

**Ms Kanazi H/B For Ms Onyango for The Plaintiff/Applicants**

**Mr Birir; present for the Defendants/Respondent**

**Mr Kanazi; the matter is for the application dated 2/2/2021. We served on 3/2/2021. To date we have not received a response. I pray that the application be allowed as it is unopposed.**

**Mr Birir; we seek more time to respond. The matter had gone to mediation, but it failed. The parties are family. I ask for 7 days to respond. My client has not interfered. This is vendetta. I am ready to tell my clients not to do anything.**

**Ms Kanazi; I have no objection**

**Court- I am of the view that we suspend this application given Mr Birir's undertaking but the same can be revived in the event of interference that is against the court order. I fix the case for pre-trial on 18/5/2020. Parties to have complied by that time**

Signed

Munyao Sila J

24/2/2021

18. **Cromwell J**, writing for the Supreme of Court Canada in *Carey v Laiken*, 2015 SCC 17 (16<sup>th</sup> April 2015), as was mentioned in **Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui [2021] eKLR** expounded on the three elements of **civil contempt** of court which must be established to the satisfaction of the court, thus:

i) *The order alleged to have been breached “must state clearly and unequivocally what should and should not be done.” This ensures that a party will not be found in contempt where an order is unclear. An order may be found to be unclear if, for example, it is missing an essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning.*

ii) *The party alleged to have breached the order must have had actual knowledge of it. It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the willful blindness doctrine.*

iii) *The party alleged to be in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels. (emphasis)*

19. From the authorities cited herein it has been held that before a person can be punished for contempt of court, the court must be satisfied that the court order alleged to have been disobeyed was clear and unequivocal in its terms. It must not be ambiguous or susceptible to multiple interpretations to a reasonable person, secondly that the party to which the said order is made to should have knowledge of the same and thirdly it has to be proved that they intentionally ignored the same. In the case of **Ochino & Another v Okombo & 4 Others (1989) eKLR** the Court of Appeal quoted the following passage from **Mwangi Mang’onde v Nairobi City Commission, Civil Appeal No. 95 of 1998**:

*“The requirement is important because the court will only punish as a contempt a breach of injunction if satisfied that the terms of the injunction are clear and unambiguous, that the Defendant had proper notice of the terms and that breach of the injunction has been proved beyond reasonable doubt.”*

20. **Indeed Counsel for the Applicant also submitted on the above three conditions which the court ought to be satisfied with before finding a party guilty of contempt -see paragraph 10 – 12 of this ruling. According to Counsel all the conditions exist to warrant the orders. I will therefore proceed to consider if the same have been met.**

**Whether that the terms of the injunction are clear and unambiguous.**

21. **The orders refer to maintenance of status quo and from the proceedings I have not seen any record aimed at clarifying what the status quo was at the time when Counsel for the Defendants undertook to maintain the status quo. It is clear from the proceedings of 10/11/20 there was an attempt by Ms. Onyango for the applicants interim orders to be granted in terms of prayer 2 of the application dated 9/10/20. This was on the basis of alleged admission of subdivision and sale in the Defendants replying affidavit. It is then that Mr. Birir stated ‘the status quo can be maintained...My clients undertake not to transfer the property’. It is clear from both Counsels that what was being referred to was subdivision and sale. The undertaking given was not to transfer the property. The Court consequently adopted that ‘the status quo be maintained.’ In my view there is no clarity of what the status quo was and the orders were not clear. The undertaking from Counsel is very broad. Even if it were to be argued that the same were clear as contended by Counsel for the Applicant as they relate to sale or transfer no evidence has been placed before this court to prove such sale or intention to transfer to a third party.**

**Whether the Defendant had proper notice of the terms of the order**

22. **This court has been urged to find that the 1<sup>st</sup> Defendant be deemed to have had knowledge of the orders by virtue of representation by an advocate. While this is arguable the procedure for orders is that they should be extracted together with the attendant penal notice and served. While Counsel undertook to inform his client, in my view the orders ought to have been properly clarified and extracted by counsel. Counsel for the Applicant did not and this court finds itself in a very difficult position to infer knowledge. I’m aware of the fact that the balance of proof in application for contempt is slightly higher than the balance of probabilities. This is rightly so because if orders are granted then committal would deny one their freedom. I’m again guided by the case of *Ochino & Another v Okombo & 4 Others (supra)* where it was stated that **breach of the injunction has to be proved beyond reasonable doubt. This court will hesitate on this basis to infer knowledge of an order that was not extracted.****

23. The upshot of the foregoing is that the court is not satisfied that the contempt alleged on the part of the 1<sup>st</sup> Respondent has been proved to the required standard. Consequently, the court finds not merit in the application. It is therefore hereby ordered; -

1. The Notice of Motion dated 18/5/2021 is hereby dismissed.
2. The parties are hereby directed to consult and propose an agreeable order to be adopted by this court on 3/02/2021.
3. Costs shall be in the cause.

**DELIVERED AND DATED AT KWALE THIS 25TH DAY OF JANUARY, 2022.**

**A. E. DENA**

**JUDGE**

**RULING DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO  
CONFERENCING PLATFORM IN THE PRESENCE OF:**

**NO APPEARANCE FOR THE APPLICANTS**

**MR. BIRIR FOR THE RESPONDENTS**

**COURT ASSISTANT – MR. DENNIS MWAKINA**