



Mua & 4 others v Kiambu Dandora Farmers Co. Ltd & 5 others (Environment & Land Case 352 of 2019) [2022] KEELC 2202 (KLR) (30 June 2022) (Ruling)

Neutral citation: [2022] KEELC 2202 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 352 OF 2019
SO OKONG'O, J
JUNE 30, 2022**

BETWEEN

**DR. BERNARD NZIOKA MUA 1ST PLAINTIFF
EBRAHIM MAHINDA WACHIRA 2ND PLAINTIFF
JAMES MURAYA 3RD PLAINTIFF
KIBURI MURIITHI 4TH PLAINTIFF
DAVID KIGOMO NJUGUNA 5TH PLAINTIFF**

AND

**KIAMBU DANDORA FARMERS CO. LTD 1ST DEFENDANT
OF NATIONAL GOVERNMENT 2ND DEFENDANT
THE INSPECTOR GENERAL OF POLICE 3RD DEFENDANT
EMBAKASI SUB-COUNTY 4TH DEFENDANT
NAIROBI CITY COUNTY 5TH DEFENDANT
HON. ATTORNEY GENERAL 6TH DEFENDANT**

RULING

1. The plaintiffs brought this suit against the defendants through a plaint dated 11th November 2019 in which the plaintiffs sought among other reliefs, a permanent injunction restraining the defendants by themselves or through their agents, directors, employees, servants, representatives or agents or through any other person claiming under or through them or otherwise howsoever from trespassing into, constructing upon, carrying out unlawful acts of violence, destruction or eviction against the plaintiffs or other residents of Sosian Estate and/or their



servants, agents and/or employees or in any other manner interfering, further interfering and/or dealing in any other manner with the plaintiffs' and other residents of Sosian Estate's right to quiet possession, enjoyment, ownership and use of the parcels of land known as L.R Nos. 15400/11, 15400/30, 15400/14, 15400/20, 15400/37, 15400/38, 15400/43, 15400/44, 15400/13, 15400/47, 15400/35, 15400/45, 15400/36, 15400/39, 15400/17, 15400/29, 15400/12, 15400/16, 15400/24, 15400/27, 15400/31, 15400/40, 15400/26, 15400/28, 15400/146, 15400/142, 15400/57, 15400/148, 15400/84, 15400/208, 15400/125, 15400/83, 15400/150, 15400/106, 15400/136, 15400/168, 15400/75, 15400/165, 15400/128, 15400/141, 15400/97, 15400/132, 15400/85, 15400/154, 15400/58, 15400/130, 15400/127, 15400/149, 15400/158, 15400/121, 15400/95, 15400/143, 15400/307, 15400/360, 15400/159, 15400/494, 15400/50, 15400/164, 15400/124, 15400/53, 15400/91, 15400/115, 15400/79, 15400/56, 15400/54, 15400/138, 15400/94, 15400/144, 15400/167, 15400/147, 15400/160, 15400/109, 15400/112, 15400/145, 15400/157, 15400/116, 15400/120, 15400/96, 15400/66, 15400/76, 15400/139, 15400/090, 15400/104, 15400/107, 15400/544, 15400/172/340, 15400/485, 15400/172/420, 15400/595, 15400/171, 15400/172/398, 15400/526, 15400/172/402, 15400/397, 15400/530, 15400/512, 15400/516, 15400/319, 15400/172/323, 15400/469, 15400/299, 15400/539, 15400/422, 15400/583, 15400/587, 15400/380, 15400/511, 15400/172/324, 15400/172/297, 15400/172/407, 15400/172/318, 15400/172/346, 15400/172/396, 15400/172/389, 15400/172/342, 15400/172/362, 15400/172/382, 15400/172/345, 15400/172/395, 15400/172/419, 15400/172/308, 15400/172/341, 15400/172/401, 15400/172/383, 15400/172/409, 15400/172/316, 15400/172/367, 15400/172/375, 15400/172/294, 15400/172/311, 15400/172/337, 15400/172/349, 15400/172/425, 15400/172/405, 15400/172/325, 15400/421, 15400/172/467, 15400/172/305, 15400/172/424, 15400/172/306, 15400/172/377, 15400/172/378, 15400/172/336, 15400/172/425, 15400/172/301, 15400/172/296, 15400/172/478, 15400/172/376, 15400/172/394 and 15400/172/410 situated at Embakasi, Nairobi City County (hereinafter referred to as "the suit properties"). The plaintiffs also sought an order compelling the 3rd and 4th defendants to avail all necessary assistance and security to the suit properties and general damages for trespass.

2. Together with the plaint, the plaintiff filed an application by way of Notice of Motion dated 11th November 2019 seeking a temporary injunction restraining the defendants by themselves or through their agents, directors, employees, servants, representatives or agents or through any other person claiming under or through them or otherwise howsoever from trespassing into, constructing upon, carrying out unlawful acts of violence, destruction or eviction against the plaintiffs or other residents of Sosian Estate and/or their servants, agents and/or employees or in any other manner interfering, further interfering and/or dealing in any other manner with the plaintiffs' and other residents of Sosian Estate's right to quiet possession, enjoyment, ownership and use of the suit properties.
3. The plaintiff's application came up for mention on 4th December 2019 when the court made among other orders, an order that the prevailing status quo be maintained. What is now before the court is the plaintiff's application dated 5th February 2020 seeking the following orders:
 - 1) That the 4th defendant, Kenneth Gitonga Murungi be committed to jail for six months or such period as the court may deem fit for contravening the order made by the court on 4th December 2019 and engaging in conduct that is an affront and sub judice to the proceedings.
 - 2) That the directors of the 1st defendant namely, Peter Karega, Joseph Nduati and Karega be committed to jail for six months or such period as the court may deem fit for contravening the order made by the court on 4th December 2019 and engaging in conduct that is an affront and sub judice to the proceedings.



- 3) The costs of and incidental to this application be borne by the defendants/respondents.
4. The grounds upon which the application is premised are set out in detail on the body of the application and in the affidavit of Dr. Bernard Mua sworn on 5th February 2020. The plaintiffs have averred that on 4th December 2020, the court made an order that the status quo be maintained. The plaintiffs have averred that while the said order was in force, the 4th defendant purported to convene a public meeting on 21st December 2019 at which he stated that the suit properties were owned by the 1st defendant and that the plaintiffs should negotiate with the 1st defendant so as to have the titles held by them regularized. The plaintiffs have averred that at the said meeting, the directors of the 1st defendant stated that they would erect an office on the suit properties for the purposes of regularizing the titles held by among others the plaintiffs. The plaintiffs have averred that the said acts by the 1st and 4th defendants were an affront to the authority of the court. The plaintiffs have contended that the 1st and 4th defendants were aware of the said court order as the same was made in the presence of their advocates. The plaintiffs have averred that the actions of the 1st and 4th defendants complained violated the terms of the said court order and undermined the authority of the court and the administration of justice. The plaintiffs have contended that their advocates on record wrote to the 1st and 4th defendants seeking their undertaking that they will desist from interfering with the plaintiffs' use and occupation of the suit properties and also served them with the said order of the court made on 4th December 2019. The plaintiffs have averred that the 4th defendant confirmed having been served with documents relating to the cases between the plaintiff and the 1st defendant.
5. The plaintiffs have averred that despite service and knowledge of the said order and while the said order was in force the directors of the 1st defendant and the 4th defendants jointly and severally working in concert had engaged in blatant breach of the order through acts which constituted contempt of court. The plaintiffs have averred that the conduct of the directors of the 1st defendant and the 4th defendant at the said meeting were intended to incite violation of the said court order and as such the same was an affront to judicial authority of the court. The plaintiffs have averred that the 1st and 4th defendants would persist with defiance of the said court order unless they are punished.
6. The application is opposed by the 1st and 5th defendants. The 1st defendant has opposed the application through a replying affidavit sworn by Joseph Mwangi Karanja on 12th March 2020. The 1st defendant has averred that it was aware of the court order that was made on 4th December 2019 and the terms thereof. The 1st defendant has averred that the 1st Defendant has complied with the said order that barred all parties from undertaking any developments on the suit property since it was issued. The 1st defendant has averred that the suit properties are highly contested between the plaintiffs and the 1st defendant. The 1st defendant has averred that the public meeting complained of by the plaintiffs was called by the 4th defendant in his capacity as the administrative head of the area where the suit properties are situated.
7. The 1st defendant has averred that the purpose of that meeting was to inform the residents of the various matters pending in court and the orders that had been issued to ensure that law and order prevailed. The 1st defendant has averred that the said meeting was called following complaints that had been lodged by the 1st defendant with the 2nd, 3rd and 4th defendants over construction activities that were being undertaken on the suit properties by some of the plaintiffs despite the orders that had been issued by the court stopping the same.
8. The 1st defendant has averred that none of the 1st defendant's directors had indicated that the 1st defendant would construct an office on the suit properties as alleged. The 1st defendant has averred



that the 4th defendant invited various stakeholders including representatives of the plaintiffs to address the meeting. The 1st defendant averred that the 4th defendant called on all parties to abide by all court orders until matters pending in court were concluded. The 1st defendant has contended that the audio evidence that was presented to court by the plaintiffs does not meet the threshold set out in sections 106 and 107B (4) of the *Evidence Act*, Chapter 80 Laws of Kenya. The 1st defendant has denied that any of its directors has breached the order made on 4th December 2019. The 1st defendant has averred further that the meeting held on 21st December 2019 did not in any way contravene the said orders.

9. The 5th defendant has opposed the application through grounds of opposition dated 12th March 2020. The 5th defendant has contended that the plaintiffs' application has no basis and that the evidence relied on in support thereof does not meet the threshold for grant of the orders sought.
10. The plaintiffs filed a further affidavit sworn by Dr. Bernard Nzioka Mua on 19th October 2020 in which the plaintiffs have averred that the proceedings of the public meeting that was held on 21st December 2019 was recorded by one, Amos Maina Mbuthia who was present at the meeting. The plaintiffs have annexed to the further affidavit a "Certificate of Electronic Voice" signed by the said Amos Maina Mbuthia.
11. The application was heard by way of written submissions. The plaintiffs filed their submissions dated 7th May 2021 while the Attorney General filed submissions dated 27th October 2021. The other parties to the suit did not file submissions. I have considered the plaintiffs' application together with the affidavits filed in support thereof. I have also considered the affidavit and grounds of opposition filed by the 1st and 5th defendants in opposition to the application. Finally, I have considered the written submissions on record. The issues arising for determination in the application before me are whether the 1st and 4th defendants breached the order made herein on 4th December 2019 and if so, whether they should be punished.
12. In the case of *Hardkinson v Hardkinson* [1952] ALL ER 567, it was held that:

"It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a court of competent jurisdiction to obey it unless and until it was discharged and disobedience of such order would as a general rule result in the person disobeying being in contempt and punishable by committal or attachment and in an application to the court by him not being entertained until he had purged his contempt."
13. In the case of *Mutitika v Babarini Farm Ltd* [1985] KLR 227 it was held that:
 - (i) A person who knowing of an injunction, or an order of stay, willfully does something, or causes others to do something, to break the injunction, or interfere with the stay, is liable to be committed for contempt of court as such a person has by his conduct obstructed justice.
 - ii. The standard of proof in contempt proceedings must be higher than proof on a balance of probabilities and almost but not exactly beyond reasonable doubt.
 - iii. The principle must be borne in mind that the jurisdiction to commit for contempt should be carefully exercised with great reluctance and anxiety on the part of the court to see whether there is no other mode which can be brought to bear on the contemnor."



14. In the *Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 others* (2018) eKLR the Court of Appeal set out the law on contempt as follows:

“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. Lastly, the standard of proof in committal proceedings is higher than proof on a balance of probabilities, though not as high as proof beyond reasonable doubt. (See *Mutitika v. Baharini Farm* (supra) and *Republic v. Ahmad Abolfathi Mohammed & Another* (supra).”

15. In *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR, the court stated as follows:

“We now revisit the issue of service. Was there service of the order said to have been disobeyed on the respondent? There is no dispute that no formal order was extracted and personally served on the respondent and an affidavit of service filed to that effect. In that respect, this case can be distinguished from *Justus Kariuki Mate & Another vs Hon. Martin Wambora* (Wambora case) supra cited by learned counsel for the applicant. On the other hand however, this Court has slowly and gradually moved from the position that service of the order along with the penal notice must be personally served on a person before contempt can be proved. This is in line with the dispensations covered under 81.8 (1) (supra). Kenya's growing jurisprudence right from the High court has reiterated that knowledge of a court order suffices to prove service and dispense with personal service for the purposes of contempt proceedings. For instance, *Lenaola J* in the case of *Basil Criticos v Attorney General and 8 Others* [2012] eKLR pronounced himself as follows:-

“...the law has changed and as it stands today knowledge supersedes personal service.....where a party clearly acts and shows that he had knowledge of a Court Order; the strict requirement that personal service must be proved is rendered unnecessary”

This position has been affirmed by this Court in several other cases including the Wambora case (supra). It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or notice of the existence of the order of the Court forbidding it. The threshold is quite high as it involves possible deprivation of a person's liberty.

.....Would the knowledge of the judgment or order by the advocate of the alleged contemnor suffice for contempt proceedings? We hold the view that it does. This is more so in a case such as this one where the advocate was in Court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in court on instructions of a party, then it behoves him/her to report back to the client all that transpired in court that has a bearing on the client's case.”



16. It is on the foregoing principles that the plaintiffs' application falls for consideration. The plaintiffs have alleged that the 4th defendant and the directors of the 1st respondent held a public meeting on 21st December 2021 in the area where the suit properties are situated at which the 4th defendant told those who attended the said meeting that the suit properties belonged to the 1st defendant and that the plaintiffs should have their titles to the suit properties regularized by the 1st defendant. The plaintiffs have claimed further that the directors of the 1st defendant who were at the meeting told those present that they would set up an office on the suit properties for the purposes of regularizing the plaintiffs' titles. The plaintiffs have contended that the said statements by the 4th respondent and the directors of the 1st respondent were made in breach of the orders of this court made on 4th December 2019. The orders made on 4th December 2019 the subject of the present application provided in part as follows:

The status quo to be maintained.”

17. It is this order of status quo that the plaintiffs claim to have been breached by the 1st and 4th defendants. The order for the maintenance of status quo was not made in vacuum. The order was made on the basis of the plaintiffs application dated 11th November 2019 in which the plaintiffs had sought a temporary injunction “restraining the defendants by themselves or through their agents, directors, employees, servants, representatives or agents or through any other person claiming under or through them or otherwise howsoever from trespassing into, constructing upon, carrying out unlawful acts of violence, destruction or eviction against the plaintiffs or other residents of Sosian Estate and/or their servants, agents and/or employees or in any other manner interfering, further interfering and/or dealing in any other manner with the plaintiffs' and other residents of Sosian Estate's right to quiet possession, enjoyment, ownership and use of the suit properties”.
18. The status quo that was prevailing was not defined. However, taking into account the circumstances under which the order was given, the order meant that the then existing state of affairs in relation to the suit properties was to be maintained pending further orders by the court. What I need to determine is whether the directors of the 1st defendant and the 4th defendant interfered with the said state of affairs. In paragraph 15 of the plaintiffs' submissions they described the 1st and 4th defendants' acts that constituted contempt as follows:

“The 1st and 4th Defendant/Respondent engaged in acts constituting willful disobedience of the Court Order by trespassing onto the Suit Land and inciting the Defendants/ Respondents and other members of the public to trespass onto the Suit Land when the Orders granted on 4th December 2019 where(sic) in place. Further, the 4th Defendant/ Respondent without authority or power purported to determine the dispute in regard to access and occupation of the Suit Land between the Plaintiffs and the 1st Defendant.”

19. I have listened to the audio recording contained in the flash disk that was filed in court by the plaintiffs together with their application. In view of the production by the plaintiffs of a certificate signed by the person who is said to have done the recording which certificate was not challenged by the defendants, I find no merit in the objection that was taken by the defendants to the said flash disk. From the audio recording, it has been demonstrated that there was a meeting held on the suit properties or somewhere nearby. The meeting was addressed by the Chairman of Embakasi Sub-County Security Committee who thereafter welcomed other people including three directors of the 1st defendant to speak. The subject of discussion was the dispute between the 1st defendant and the plaintiffs over the ownership of the suit properties. What was said by the main speaker who is said to be the 4th defendant and the three directors of the 1st defendant is clear from the recording.



20. The 4th defendant did not swear an affidavit to rebut the allegations made against him in the plaintiffs' affidavit in support of the application. The court will assume that what the 4th defendant is alleged to have said at the said meeting is true. Like the 4th defendant, none of the directors of the 1st defendant who are alleged to have attended the said meeting and made utterances alleged to be contemptuous of the court order swore an affidavit to deny their alleged utterances. What they are alleged to have told those who attended the said meeting will therefore be assumed to be true.
21. The 1st and 4th defendants' advocates were in court when the order of 4th December 2019 was made. They therefore had knowledge of the order. On the authority of *Shimmers Plaza Limited v National Bank of Kenya Limited* (supra), the 1st and 4th defendants are presumed to have been informed of the order by their advocates and as such were aware of the same.
22. I am not satisfied that the plaintiffs have proved that what the 1st defendant's directors and the 4th defendant told those who attended the meeting held on 21st December 2019 contravened the order of status quo made on 4th December 2019. While it is true that the issues that were being discussed at the said meeting are the subject of this suit and that the 4th defendant had no jurisdiction to determine the ownership of the suit properties, the plaintiffs have not demonstrated that the 4th defendant interfered with the suit properties or the plaintiff's possession or title to the same in any manner. The complaint against the 1st defendant's directors is that they told the gathering that they would set up an office on the suit properties to be used to regularize the titles held by the plaintiffs. There is no evidence that they did put up such office. I am of the view that the present application was totally uncalled for.
23. Due to the foregoing, it is my finding that the plaintiffs have failed to demonstrate that the speeches made by the 4th defendant and the 1st defendant's directors on 21st December 2019 were in breach of the orders made by the court on 4th December 2019. The plaintiffs have therefore failed to prove the contempt of court alleged against the 1st defendant's directors and the 4th defendant.
24. In the final analysis, the plaintiffs' application dated 5th February 2020 is not for granting. The application is dismissed with costs to be in the cause.

DELIVERED AND DATED AT NAIROBI THIS 30 TH DAY OF JUNE 2022

S. OKONG'O

JUDGE

**RULING DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO
CONFERENCING PLATFORM IN THE presence of:**

Ms. Mutegi h/b for Mr. Nderitu for the Plaintiff

N/A for the 1st Defendant

N/A for the 2nd, 3rd, 4th and 6th Defendants

Ms. Apolot for the 5th Defendant

Ms. C. Nyokabi-Court Assistant

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