



REPUBLIC OF KENYA



**KENYA LAW**  
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**Siyam & another v Desai & another (Environment & Land Case  
993 of 2014) [2022] KEELC 2955 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2955 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 993 OF 2014**

**LN MBUGUA, J  
JUNE 23, 2022**

**BETWEEN**

**DINKER NARAN SIYAN ..... 1<sup>ST</sup> APPLICANT**

**SURESH NARANA SIYAN ..... 2<sup>ND</sup> APPLICANT**

**AND**

**BHARAT DESAI ..... 1<sup>ST</sup> RESPONDENT**

**SHITAL DESAI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This suit was settled in terms of the consent recorded in court on 4.11.2019 in the following terms:
  1. “The Defendants do recognize the Plaintiffs as the owners of the Flat No. 3 aka B3 erected on LR No. 209/1/9
  2. The Defendant shall facilitate registration of a lease in favour of the Plaintiffs to the Flat and ensure that a good title is passed to the Plaintiffs
  3. Should the Defendant in future intend to develop or sub-divide LR No. 209/1/9 they shall seek the consent of the Plaintiffs and the consent shall not be unreasonably withheld.
  4. Each party will bear its own costs of this suit.”
2. The Applicants have brought forth an application dated 9.8.2021 seeking the following orders:
  1. “Spent
  2. That this Honourable Court do find the 1st and 2nd Respondents guilty of Contempt of court for failure to comply with the orders of this Honourable court dated 4th November, 2019 and the Decree issued on 9th December 2019.



3. That this Honourable court do commit the 1st and 2nd Respondents to Civil Jail for a period not exceeding six months for contempt of court.
  4. That the costs of this application be borne by the Respondents”.
3. The Applicants contend that the Respondents have failed to comply with the consent order.
  4. The Respondents have opposed the application vide the replying affidavit of the 2nd Defendant dated 8.12.2021. He contends that his proprietary interests in the development were as a result of inheriting 1/3 undivided share from his mother Pramika Virendra Desai’s estate who died on 28.8.2007. He avers that his mother co-owned the land LR. 209/1/9 with his uncles namely Jitendra Manubhai Desai and the 1st Respondent. He further avers that the confirmed grant was issued to him on 6.5.2009 in respect of his mother’s estate but the development into mother title still bears the name of Dramika as no vesting assent has yet been registered in his favour as the beneficiary of the ½ undivided share in the development.
  5. He contends that the deed file at lands Registry for LR. No. 209/1/9 is missing hence the vesting assent has not been registered against the title.
  6. Nevertheless, in an effort to comply with the consent order, the respondents instructed their advocates to prepare a draft lease in favour of the applicant which draft was duly forwarded to the advocates for the Applicant.
  7. The Respondents also contend that the new laws also affected the process of registrations including the new Sectional Properties Act. Further, the Corona Virus set in and the land offices were closed down, and the scanning happening at lands offices have severely hampered their quest to locate the development file at lands office.
  8. That further, Jitahal Manubhai Desai, one of the co-owners of parcel 209/1/9 passed away on 11.7.2020, thus they have to wait for the processes of probate and administration to be completed, to effect registration of the lease in favour of the application.
  9. The Respondents therefore aver that their hands are tied and the delay has been caused by externalities of which Respondents have no control over.

### **Determination**

10. Section 5 of the *Judicature Act* provides for the punishment of contempt of court in the following terms:
 

“(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 the subordinate courts”.
11. Courts have held that for a person to be cited for contempt it must be evident that the court order was deliberately disobeyed. In the Court of Appeal case of *Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 others* [2018] eKLR it was stated that;
 

“...It is trite that to commit a person for contempt of court, the court must be satisfied that he has wilfully and deliberately disobeyed a court order that he was aware of... Secondly, ... 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...”

12. Was the consent order of 4.11.2019 absolutely clear on what each party was supposed to do?
13. Certainly not. Two pertinent issues emerge concerning firstly the nature and extent of interests on the suit property and secondly the issue of timelines.
14. The suit land is identified as Flat No. 3 also known as B3 erected on land R. No. 209/1/9. The nature of interest of the Respondents in that land 209/1/9 was not clearly defined in the consent. What has emerged is that a share of the property 209/1/9 is in the name of a deceased person (Pramika mother of 2nd Respondent). It follows that the compliance with Clause No. 2 in the consent was dependent on other factors which were not captured in the consent. The 2nd Respondent has detailed those factors, contending that although he acquired a grant in respect of his mother’s estate, the share of the land has not vested into his name in terms of registration due to various factors like change in land laws, disappearance of the deed file at lands Registry as well as the Corona Virus Pademic which hampered activities at lands office.
15. The court takes judicial notice that indeed there have been legal dynamics touching on land administration including the coming into force of the sectional properties Act of 2020. The court also takes judicial notice that indeed the Covid-19 Pademic did hit the country and entire globe for the better part of year 2020 of which various offices were being closed down now and then. The lands offices were not spared.
16. On the issue of timelines, I find that nowhere in the consent did the parties, factor in that issue. No timelines were set as to when a particular step was to be undertaken. What is apparent is that the Respondents have forwarded a draft lease to the applicant but the issue of the missing file at the Lands Office still stands in the way.
17. That is not all, another co-owner of the property one Jatendra has also died and again this will ultimately affect the excision of the suit property (Flat No. 3) from the mother title.
18. I have not seen any evidence which can be construed as none compliance with the consent. After all, nowhere has it been indicated that the Applicant is not the owner of the suit land.
19. From the analysis herein, it emerges that the case has not met the Standard of proof required to commit someone to civil jail. Thus the application is dismissed with each party bearing their own costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JUNE, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Muriungi holding brief for Oranga for the Applicant

Shah for the Respondents

Court Assistant: Eddel Barasa

