



Tebino v Chief Land Registrar & another; Waiyaki (Interested Party) (Environment & Land Petition E015 of 2020) [2022] KEELC 147 (KLR) (16 June 2022) (Ruling)

Neutral citation: [2022] KEELC 147 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND PETITION E015 OF 2020

LC KOMINGOI, J

JUNE 16, 2022

**IN THE MATTER OF: THE CONTRAVENTION OF FUNDAMENTAL
RIGHT AND FREEDOMS AS ENSHRINED UNDER ARTICLES
40 & 47 OF THE CONSTITUTION OF KENYA, 2010**

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT NO.4 OF 2015

AND

IN THE MATTER OF THE LAND REGISTRATION ACT, NO.3 OF 2021

AND

IN THE MATTER OF: TITLE NUMBER DAGORETTI/RIRUTA/T.738

BETWEEN

VALENTINE AJIAMBO TEBINO PETITIONER

AND

CHIEF LAND REGISTRAR 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

AND

ANDERSON KIGAMBA WAIYAKI INTERESTED PARTY

RULING

1. This is the notice of motion dated 28th January 2022 brought under Section 5(1) of the *Judicature Act*, Cap 8 of the Laws of Kenya, Order 51 rule 1 of the *Civil Procedure Rules* 2010, Rule 81.4 of the *Civil Procedure (Amendment No 2) Rules of England* 2012 and all other enabling provisions of the law.



2. It seeks orders:-
 1. Spent.
 2. The crux of the application is that it seeks inter-alia:
 - (a) That this honourable court be pleased to find the Senior Assistant Chief Land Registrar one David Nyandoro and his Registrar, one Choka Beriata Andeyo, in flagrant and callous contempt of court for the deliberate/willful and mala fides disobedience of this honourable court's mandatory orders dated 25th November 2021, issued on the 29th November 2021 and this honourable court's decree issued on the 8th December 2021.
 - (b) That the grant of prayer (2) above this honourable court be pleased to issue warrants of arrest for both the Senior Assistant Chief Land Registrar, one David Nyandoro and his Registrar, one Choka Berita Andeyo and the same be effected/enforced by the Directorate of Criminal Investigations (serious crimes) office
 - (c) That this honourable court be pleased to commit the said Senior Assistant Chief Land Registrar, on David Nyandoro to Kamiti Maximum Prison, without an option of a fine, for a period of not less than (6) months or up until he purges his contempt.
 - (d) That this honourable court be pleased to commit the Registrar, one Choka Berita Andeyo to Langata Women's Prison, without an option of a fine for a period not less than six (6) months or up until she purges her contempt.
 - (e) That upon the grant of prayer tow (2) above, this honourable court be pleased to issue an order deeming both the Senior Assistant Chief Land Registrar, one David Nyandoro and his registrar one Choka Berita Andeyo, as totally unfit and unsuitable to hold public office within the Republic of Kenya.
 - (f) That the said Senior Assistant Chief Land Registrar, one David Nyandoro and his Registrar, one Choka Berita Andeyo, do personally and collectively meet the costs of this application.
3. The grounds are on the face of the application and are set out in paragraphs (a) to (i).
4. The Application is supported by the affidavit of Valentine Ajiembo Tebino, the Petitioner/Applicant herein, sworn on the 28th January 2022, a further affidavit sworn on the 27th March 2022 and a second further affidavit sworn on the 15th April 2022.
5. The Application is opposed. There is a replying affidavit sworn by Choka Berita Andeyo, a Land Registrar on the 21st March 2022.
6. There is also a replying affidavit sworn by David Nyandoro Nyambaso the Senior Assistant Chief Land Registrar on the 21st March 2022.
7. On the 28th March 2022, the court with the consent of parties directed that the notice of motion be canvassed by written submissions.
8. I have considered the notice of motion and the affidavits in support, I have also considered the responses thereto, the written submissions and the authorities cited. The issue for determination is whether this application is merited.



9. I have gone through the affidavits of Choka Berita Andeyo, the second alleged *contemnor* and David Nyandoro Nyambaso, the first alleged *contemnor*. Each of them state that they were not served with the decree emanating for the Judgment of this court dated 25th November 2021. That instead the decree was served on the legal clerk in the Legal Department and not on the office of the Chief Land Registrar.
10. The second alleged *contemnor* states that she has since been deployed to the National Geospatial Center, Survey of Kenya Ruaraka since 9th August 2021. That therefore she could not have had knowledge of the judgment and the decree.
11. The first alleged *contemnor* David Nyandoro Nyambaso also stated that the judgment was not served on the office of the Chief Land Registrar where he works. In the case of *Sheila Cassatta Issenberg & Another vs Anthony Macharia Kinyanjui* [2021] eKLR, the court held as follows:

“ 52. Due to the gravity of consequences that ordinarily flow from contempt proceedings, it is proper that that the order be served and the person cited for contempt should have had personal knowledge of that order.

.....

55. The applicants submitted that respondent was aware of the order because his advocate was in court. There is no evidence that the respondent was aware of the terms of the order. Knowledge is a question of fact and one must be aware of the terms of the order. That is, he must know what the order requires him to do or not to do but willfully and deliberately disobeyed it.

...

58. The emphasis as shown in the above cases is that there must be “willful and deliberate disobedience of court orders” There cannot be deliberate and willful disobedience, unless the contemnor had knowledge of the existence of that order. And because contempt is of a criminal nature, it is always important that breach of the order be proved to the required standard; first that the contemnor was aware of the order having been served or having personal knowledge of it, and second; that he deliberately and willfully disobeyed it.”

12. In the case of *Basil Criticos vs Attorney General & 8 Others* [2012] eKLR, it was held that:-

“ 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”.

13. I find that the Petitioner has failed to demonstrate the alleged contemnors had knowledge of the judgment dated 25th November 2021 and the decree emanating therefrom.

14. The Petitioner has also failed to demonstrate that the alleged contemnors willfully and deliberately disobeyed the orders of the court. In the case of *Mburu Ndekei vs Ruth Njeri Mutema* [2017] eKLR the court held thus:-

“ Contempt of court is constituted by conduct that denotes willful defiance of or disrespect towards the court or that willfully challenges or affronts the dignity of the court or supremacy of the law whether in civil criminal proceedings”.



15. I have gone through the replying affidavit together with annexures of David Nyandoro Nyambaso the Senior Assistant Chief, Land Registrar in particular paragraph 15 to 19. He raises weighty issues touching on the existence of Dagoretti/Riruta/T.738. These are serious issues which cannot be wished away.
16. It may be necessary for the Petitioner to pursue the issue in a civil litigation in order for this issues to be resolved. It is only then that evidence can be called as to the existence or not of Dagoretti/Riruta/T.738.
17. All in all, I find no merit in this application and the same is dismissed with no orders as to costs.
18. This court is not prevented from issuing summons to the Senior Assistant Chief Land Registrar, David Nyandoro Nyambaso, to shed light on whether the suit property the subject of the intended Registration exists.

It is so ordered.

DATED, SIGNED AND DELIVERED NAIROBI THIS 16TH DAY OF JUNE 2022.

L. KOMINGOI

JUDGE

In the presence of:-

Mr. Tebino for the Petitioner

Ms Nyawira for the Respondents

Steve - Court Assistant

