



**Njenga v Koimburi & 3 others (Environment & Land Case  
819 of 2017) [2022] KEELC 3405 (KLR) (8 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 3405 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 819 OF 2017**

**BM EBOSO, J**

**JUNE 8, 2022**

**BETWEEN**

**MARY WANJIRU NJENGA ..... PLAINTIFF**

**AND**

**WAWERU KOIMBURI ..... 1<sup>ST</sup> DEFENDANT**

**KAHURA KOIMBURI ..... 2<sup>ND</sup> DEFENDANT**

**KOIMBURI NDONYE ..... 3<sup>RD</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. Judgment in this suit was rendered by Ong'ondo J way back in 2019 in the following terms:
  - a) The defendants, their agents or employees be evicted from the plaintiff's land, Reference Number Muguga/ Muguga/ T421 forthwith.
  - b) That the defendants do pay to the plaintiff mesne profits of kshs 24,000 from 1996 up to the year 2000 and thereafter kshs 6,000 per year till they vacate therefrom or such other sum as the court may deem fit to grant.
  - c) That costs are awarded to the plaintiff.
  - d) That the 1st and 2nd defendants' re-amended counterclaim and dated July 24, 2005 be and is hereby dismissed with costs to the plaintiff.
2. It does emerge from the materials before court that the suit land was vacated. However, the mesne profits and costs of the suit have not been paid to the plaintiff. It does also emerge that the 1st, 2nd and 3rd defendants have all died.



3. Against the above background, the plaintiff/decree-holder brought a notice of motion dated October 25, 2021, seeking the following verbatim relief:

“2. That this honourable court be pleased to cite the respondent for contempt of court and he be committed to civil jail for a period not exceeding (6) months for disobeying a court order dated November 20, 2018.”

4. The said application is the subject of this ruling. The application was supported by the plaintiff's affidavit sworn on October 25, 2021. She deposed that although the defendants have been aware of the decree of the court, they have blatantly disobeyed it. The plaintiff who currently acts in person canvassed the application in open court on May 23, 2022. She confirmed that the defendants surrendered the land but had not paid the decretal sum.

5. The defendants did not file a response. However, one Peter Ndongye Koimburi attended court. He informed the court that he was a son to Koimburi Ndongye [3rd defendant]. He further informed the court that the 1st, 2nd and 3rd defendants had all died. He added that whereas he was the administrator of the estate of Koimburi Ndongye [3rd defendant], the other two defendants had no personal representatives.

6. I have considered the application alongside the oral presentations made to the court by the plaintiff and by Mr Peter Ndongye Koimburi. I have also considered the relevant legal frameworks. The single question to be answered in the present application is whether there is a proper basis for issuance of contempt orders in the circumstances of this application at this stage.

7. The applicant did not contest the contention that the 1st, 2nd and 3rd defendants have all died. Secondly, the plaintiff who until recently was represented by an advocate, has not undertaken substitution proceedings in respect of the three deceased defendants. As things stand at the moment, there is no proper respondent to the plaintiff's application. Put differently, there is no proper respondent against whom the contemplated contempt order would issue. Thirdly, the Civil Procedure Rules have an elaborate legal framework on how decrees of the court are enforced. Indeed, if the plaintiff wishes to have the liable party committed to civil jail for failure to pay her the decretal sum, the Civil Procedure Rules have an appropriate framework on that. The legal framework does not require a formal application before a judge such as the present application. Fourthly, the applicant has a decree which she should enforce on the platform of the succession causes relating to the deceased defendants. Lastly, the Law of Succession Act has a clear framework on how liabilities of a deceased person are to be factored in the succession proceedings relating to the estate of the deceased.

8. For the above reasons, the court is not satisfied that there is a proper basis for issuance of contempt orders in the circumstances of this application. The application is accordingly rejected with no order as to costs. The plaintiff shall nonetheless be at liberty to execute the decree as provided under the Civil Procedure Rules and the Law of Succession Act.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 8TH DAY OF JUNE 2022**

**B M EBOSO**

**JUDGE**

**In the presence of: -**

**Mary Wanjiru Njenga – plaintiff – present in person**

**Peter Ndongye Koimbu – son to Koimburi Ndongye, deceased.**



**Court assistant: Lucy Muthoni**

