



**Meli v Rop (Environment & Land Case 598 of 2012)  
[2022] KEELC 2186 (KLR) (8 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2186 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 598 OF 2012  
SM KIBUNJA, J  
JUNE 8, 2022**

**BETWEEN**

**KIBET MELI ..... PLAINTIFF**

**AND**

**SUSAN ROP ..... DEFENDANT**

**RULING**

1. The Plaintiff moved the court vide the notice of motion dated 9<sup>th</sup> November, 2021 seeking for the following orders;
  - a. “Spent;
  - b. That this Honourable Court be pleased to summon Susan Rop to show cause why she should not be committed to civil jail for a period of up to six months for blatantly disrespecting this Honourable Court by disobeying the orders issued by this Court on 2<sup>nd</sup> July, 2018.
  - c. That the Respondent be ordered to pay costs of this application.”
1. The application is based on the six (6) grounds on its face and supported by the affidavit sworn by Kibet Meli, the Plaintiff, on the 9<sup>th</sup> November, 2021. The plaintiff among others deposed that the orders of this Honourable Court issued on 28<sup>th</sup> June, 2018, restrained the parties from further dealing with Nandi/Cheptil/480, the suit property; that despite the existence of the said order, Susan Rop, the Defendant, has continued to violate it by dealing with the property and attempting to transfer the same to a third party; that he got wind of the dealings through a neighbor who had visited the Land Control Board and noticed that the parcel of land was part of the agenda items of the Board meeting; that he immediately served a copy of the court order upon the Chair of the Board, who summoned the Defendant but she ran away upon noticing his presence; that the conduct of the Defendant is deliberate and beseeched the court to find her in contempt and stamp its authority.



2. The Defendant opposed the application through her replying affidavit sworn on the 8<sup>th</sup> December, 2021 in which she inter alia deposed that the minutes of the Land Control Board, shows that the alleged third party is the owner of the suit land and is the one in occupation and use of the said land; that the land was after purchase registered in her name for the third party's benefit as he was, and still is out of the country; that the orders of 2<sup>nd</sup> July, 2018 did not restrain her from doing anything in respect of the suit land; that she is not in contempt of court orders of the 2<sup>nd</sup> July, 2018 as she was not aware of the it until the present application was filed; that the search certificate shows the order was registered only recently.
3. That directions on filing and exchanging written submissions were issued on the 8<sup>th</sup> February 2022, following which the learned counsel for the Plaintiff and the Defendant filed their submissions dated the 28<sup>th</sup> February, 2022 and 7<sup>th</sup> March, 2022 respectively.
4. The following the issues for the court's determinations;
  - a. Whether the Plaintiff has proved that the Defendant in contempt of the orders of 2<sup>nd</sup> July, 2018 and if so, what sanction to issue.
  - b. Who bears the costs of the application.
5. The court has carefully considered the grounds on the application, the affidavit evidence tendered, the submissions by the learned counsel, superior courts decisions cited thereon, and come to the following findings;
  - a. That it is not contested that on the 2<sup>nd</sup> July, 2018, the court issued an order, a copy of which is annexed to the supporting affidavit of the Plaintiff. What the Defendant has disputed is whether that order indeed restrained her from doing anything in respect of the said land. I have looked at the said order and I must state that it is clear and unambiguous. It was to preserve the property by stopping any further dealings, registration and transactions over the property known as NANDI/CHEPTIL/480, pending the hearing and determination of the main suit.
  - b. That the Plaintiff has urged that despite the Defendant's knowledge of the aforesaid court order, she has continued interfering with the said parcel of land, by attempting to transfer the same in favour of a third party as demonstrated by the minutes of the Land Control Board on 26 January, 2021. He has annexed the minutes of 26<sup>th</sup> January, 2021 in his affidavit. The Plaintiff further contends that a neighbour who had attended the Land Board called and informed him that the suit property had been listed as the first agenda on the said date. That he immediately rushed to Kabiyeet Land Control Board and met the chairman thereto and served him with the court order dated 2<sup>nd</sup> July, 2018. The Plaintiff further states that the actions of the Defendant are aimed at changing the nature of the suit land, and is blatant contempt of the orders of the court. That the conduct of the Defendant was deliberate and aimed at lowering and demeaning the dignity and authority of the court.
  - c. That though the Defendant at paragraph 6 of her replying affidavit deposed that the order of 2<sup>nd</sup> July, 2018 "did not in any way restrain me from doing anything in respect of the suit land", she at paragraph 7 appeared to suggest the order had not been brought to her attention earlier as she deposed that "the order has now been brought to my attention. I was not aware of the same prior to this application". That the affidavit of service sworn by Vincent Otieno Ogotu on the 26<sup>th</sup> April, 2019, that is annexed to the Plaintiff's supporting affidavit shows that the Defendant was served with the order on the 23<sup>rd</sup> April, 2019 while attending a criminal trial at Kapsabet court in which she was a complainant. That the contents of that affidavit of service



has not been challenged by for example seeking to cross examine the deponent, and the court has no difficulties coming to the conclusion that the Defendant was indeed served with a copy of the court order issued on 2<sup>nd</sup> July 2018 on the 23<sup>rd</sup> April 2019.

d. That according to the *Black's Law Dictionary* 9<sup>th</sup> edition;

“Contempt is a disregard of, disobedience to, the rules, or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body.”

There are essentially four elements that must be proved to make the case for civil contempt. The Applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that: -

- (a) (a)the terms of the order were clear and unambiguous and were binding on the Respondent;
- (b) the Respondent had knowledge of or proper notice of the terms of the order;
- (c) The Respondent has acted in breach of the terms of the order; and
- (d) the Respondent’s conduct was deliberate.

6. From a perusal of the order, it evident that the court issued a conservatory order, preserving the suit property pending the hearing of the main suit; an order of inhibition stopping further dealings, registration and transactions over the parcel of land; and lastly, directed that the parties to the suit do maintain the status quo pending the hearing of the main suit. The deposition by the Defendant at paragraph 6 of her replying affidavit, that the orders did not restrain her in any way from dealing with the suit property, and at paragraph 7 that she was not aware of the existence of the order until after this application was filed, is in the face of the findings above far-fetched.

e. That on whether the Plaintiff has proved that the Defendant has acted in breach of the terms of the order, he has deposed and annexed documentary evidence, in form of the minutes of the Land Control Board meeting held on 26<sup>th</sup> January, 2021 that confirms the Defendant had sought for consent to transfer the suit land to one Kipkirwa Lazarus Kirui. The Plaintiff’s deposition on how he served a copy of the order to the chair of the board to stop the agenda relating to the suit land being deliberated has not been challenged. It has also not been challenged that the said chairman summoned the Defendant but she failed to appear. The court is therefore satisfied that the Defendant’s action of seeking for consent from the Land Control Board to transfer the suit land to the said third party, when the order of 2<sup>nd</sup> July, 2018 was still in force amounts to disobedience of the order.

f. That I have carefully considered the application and the evidence tendered as well as the submissions of the parties on the issue, I am satisfied that the first three elements that are to be proved as set out in (d) above have been met. That being the case, the answer to the fourth element as to whether the disobedience was deliberate remains largely tautological. There was clear and unambiguous order served upon the Defendant. The evidence tendered shows she has acted in deliberate breach of the Order, and therefore the breach must have been deliberate. That section 63(c) of the *Civil Procedure Act* chapter 21 of Laws of Kenya provides that:

“In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed:



- a) .....
- b) .....
- c) Grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold”.

7. That pursuant to section 63 (c) aforesaid, it is provided under Order 40 Rule 3(1) of the [Civil Procedure Rules](#) that:

“3(1) In case of disobedience, or breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release”.

8. The Plaintiff has in making a case for the court to find the Defendant to be in contempt, submitted that it suffices that one was aware of the existence of the Order, and has willfully disobeyed it. He relies on the decisions in [Kobilo Farm Limited & another](#) [2020] eKLR; [Abida Werimba Mwaniki & 2 others](#) [2017] eKLR; [Ashock Labshanker Doshi & another v County Government of Mombasa & 3 others](#) [2021] eKLR.

g. The Defendant submitted that the allegation that she had made an application to transfer the suit land to Lazarus Kipkirwa in a sitting of Kabiyet Division Land Control Board on the 26<sup>th</sup> day of January, 2021 has not been established as minutes annexed are uncertified. That the copy of an alleged affidavit of service of the order did not have a certificate of the process server attached, to confirm if indeed he was licensed. The Defendant further submitted that no order was attached to the application. The foregoing claims are not accurate, as a copy of the order of 2<sup>nd</sup> July 2018 and the affidavit of service are indeed annexed to the Plaintiff’s supporting affidavit. That the Defendant cited the authorities of [Johnson v Grant](#) (1923) SC 789; [Teachers Service Commission v Kenya National Union of Teachers & 2 others](#) [2013] eKLR, [Gatharia K. Mutikika Versus Baharini Farm Limited](#) [1985] KLR, amongst a plethora of other foreign and local decisions to buttress her case for the dismissal of the application, which the court has taken note of.

h. That there is an uncompromising obligation on anyone to whom a Court order is directed to obey it. Proof of disobedience and intention to disobey is therefore mandatory ingredients of the offence of contempt of court orders. It must therefore be proved in an application of this kind that the alleged contemnor had knowledge of the order and deliberately disobeyed it. That while dealing with the question of contempt in the case of [Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another](#) [2005] KLR 828, Ibrahim, J. (as he then was), underscored the importance of obeying court orders, stating:

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of



this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.” (emphasis added)

- i. That in the case at hand, the evidence adduced confirms that the order in question, annexure KM1, was duly served on the Defendant on 23<sup>rd</sup> April, 2019 as demonstrated by annexure KM2, attached to the Plaintiff’s supporting affidavit. That the evidence further shows that despite the Defendant having knowledge of the existence of the said orders that had a clear penal notice, she set out to disobey it on the 26<sup>th</sup> January, 2021 by attempting to transfer the suit property to a third party as demonstrated by annexure KM 3 in the Plaintiff’s supporting affidavit. The Defendant’s application to the Land Control Board for consent to transfer the suit property appears in the minutes as AGENDA NO:1/2021-NANDI/CHEPTIL/480. The in the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 others* [2013] eKLR the court observed that: -
9. The reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law.”
10. And in the case of *Shimmers Plaza Ltd v National Bank of Kenya Ltd* CA no. 33 of 2012 the Court of Appeal held;

“We reiterate that Court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather is mandatory and a person does not choose whether to obey a Court order or not.....The Courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left right and Centre. This would amount to abdication of our sacrosanct duty bestowed on us by the Constitution. The dignity and authority of the Court must be protected and that is why those who flagrantly disobey them must be punished lest they lead us all to a state of anarchy.”
- j. That where there is clear disobedience of court orders as is the situation herein, consequences must ensue, at the very least as decreed by law. I refuse to sit in awe and watch in helplessness as the orders of the court are flagrantly disobeyed by parties who have an obligation to obey them. That as aptly captured by Theodore Roosevelt, the 26<sup>th</sup> President of the United States of America: -

“No man is above the law and no man is below it; nor do we ask any man’s permission to obey it. Obedience to the law is demanded as a right; not as a favour.”
11. The present case is one that calls on the court to rise to the occasion and protect its dignity.
- k. That it is the court’s finding that Plaintiff has proved beyond peradventure that the Defendant blatantly disobeyed the orders issued by the court on the 2<sup>nd</sup> July, 2018 and is therefore in contempt of court. That the Plaintiff is under section 27 of the *Civil Procedure Act*, chapter 21 of the Laws of Kenya entitled to costs in the application.
1. That flowing from the foregoing, the court find merit in the Plaintiff’s application dated the 9<sup>th</sup> November, 2021 which is hereby allowed with costs in terms of prayer 2, and following orders issued;



- a. That the Defendant committed contempt of court by disobeying the court order of the 2<sup>nd</sup> July, 2018 in attempting to transfer the suit land through her application to the Land Control Board for consent to transfer the same to a third party.
- b. That the Defendant is to pay a fine of Kshs. 200,000/- (two hundred thousand) within the next 30 (thirty) days, in default warrant of arrest for her to issue, and she be committed to four (4) months imprisonment.
- c. That the Defendant do pay the Plaintiff's costs in the application.

12. Orders accordingly.

**DATED AND VIRTUALLY DELIVERED THIS 8TH DAY OF JUNE, 2022**

**S.M.KIBUNJA,J.**

**ENVIRONMENT & LAND COURT – ELDORET**

IN THE VIRTUAL PRESENCE OF;

PLAINTIFF: .....Absent....

DEFENDANT: ...Absent ...

COUNSEL: ...Ms. Kibet for Kibii for Plaintiff...

COURT ASSISTANT: ONIALA

