



REPUBLIC OF KENYA



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Charo v Kilifi Land Registrar & another (Environment and Land Miscellaneous Application 23 of 2019) [2022] KEELC 3373 (KLR) (27 July 2022) (Ruling)

Neutral citation: [2022] KEELC 3373 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 23 OF 2019
NA MATHEKA, J
JULY 27, 2022

BETWEEN

DUNCAN CHARO APPLICANT

AND

KILIFI LAND REGISTRAR 1ST RESPONDENT

CHIEF LAND REGISTRAR 2ND RESPONDENT

RULING

1. The application is dated June 20, 2019 and is brought under article 159 of *the Constitution* of the Republic of Kenya 2010, sections 1A, IB & 3A of the *Civil Procedure Act* cap 21 laws of Kenya, sections 3 & 14 of the *Environment and Land Court Act* (No. 19 of 2011) and order 51 rule 1 of the *Civil Procedure Rules*, 2010 seeking the following orders;
 1. That this Honourable Court be pleased to commit the Land Registrar, Kilifi and the Chief Land Registrar; the Respondents herein to civil jail for a period not less than twenty four (24) months for contempt of court for having disobeyed the Order of this Court dated 21st December 2007 in Mombasa ELC No. 3 of 2007 (JR).
 2. That the contemnors be ordered to meet the costs of this application.
2. It is based on the grounds that the 1st and 2nd Respondents have disobeyed a court order that was issued in Mombasa ELC No. 3 of 2007 (J.R) and still continue with the said disobedience 2019. The integrity and dignity of the court is threatened by the 1st and 2nd defendant's/respondent's action.
3. This court has considered the application and submissions therein. The application is based on the grounds that the court on the May 18, 2018 issued orders of mandamus directed to the respondents compelling them to register the transfer and discharge of charge and issue a certificate of title in favour of the applicant over Plot No. Chembe/Kibabamshe/364. The said order was served on the



respondents on May 29, 2018. The respondents have continued to be in breach of the said order. The [*Black's Law Dictionary*](#) (Ninth Edition) defines contempt of court as:

“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”

4. This application is anchored on section 63 (c) of the [*Civil Procedure Act*](#) which provides that:-

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

(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”

5. 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 disobedient 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”

6. In the case of [*Teachers Service Commission vs Kenya National Union of Teachers & 2 others*](#) (2013) eKLR the court stated as follows:-

“The reason why courts will punish for contempt of court then is to safe guard 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.”

7. Contempt of court is a grave matter as it concerns the dignity of the court when law and order is threatened and the fact that liberty and fundamental rights and freedoms of the alleged contemnor are at stake. The standard of proof is higher than proof on a balance of probabilities but not as high as proof beyond reasonable doubt. In the case of [*Republic vs Ahmad Abolfathi Mohammed & another*](#) (2018) eKLR, the Supreme Court stated as follows:

“We are also conscious of the standard of proof in contempt matters. The standard of proof in cases of contempt of Court is well established. In the case of *Mutitika v. Baharini Farm Limited* [1985] KLR 229, 234 the Court of Appeal held that:

‘in our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature.’

The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail, must



be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor's conduct"

8. In the instant case it is on record that the court, that a consent order was entered on 21st December 2007. The said order was served on the respondents on May 29, 2018. The application was unopposed. All persons upon whom a court order is served or who are aware of a court order have a duty to obey it. The only avenue available for a party who is not satisfied with an order of the court is to approach the court seeking variation or setting aside, this has not been done. I find that this application is merited and I make the following orders;

1. That the respondents herein are to comply with the court order issued on May 18, 2018 within the next 60 (sixty) days after service of this order failure of which the will be cited for contempt and be directed to pay a fine of Kshs. 50,000/= each and in default, the respondents to each be committed to civil jail for a period of one (1) month.
2. That costs of this application to the applicant.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 27TH DAY OF JULY 2022.

N.A. MATHEKA

JUDGE

