



REPUBLIC OF KENYA



KENYA LAW
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Munga & another v Bulkon Builders Limited & 3 others (Environment & Land Case 188 of 2018) [2022] KEELC 3688 (KLR) (26 July 2022) (Ruling)

Neutral citation: [2022] KEELC 3688 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 188 OF 2018**

NA MATHEKA, J

JULY 26, 2022

BETWEEN

OMAR MUGALA MUNGA 1ST PLAINTIFF

IDD NGALA 2ND PLAINTIFF

AND

BULKON BUILDERS LIMITED 1ST DEFENDANT

OCS BAMBURI POLICE STATION 2ND DEFENDANT

DEPUTY COUNTY COMMISSIONER KISAUNI 3RD DEFENDANT

OCPD KISAUNI 4TH DEFENDANT

RULING

1. The application is dated March 31, 2022 and is brought under sections 1A, IB, 3A & 63 of the [Civil Procedure Act](#) and order 40 rule 3 of the *Civil Procedure Rules 2010* seeking the following orders;
 1. That this application be certified urgent and service hereof be dispensed with in the first instance;
 2. That pending the hearing and determination of this application inter-partes, the Deputy county commissioner, Kisauni sub-county and the OCPD Kisauni be directed to enforce the restraining order of this honourable court given on October 28, 2019 and issued on November 8, 2019;
 3. That the plaintiffs herein be held to be in contempt of court for their refusal, neglect and/or failure to comply with this honourable court's order of the October 28, 2019 issued on the November 8, 2019 and appropriate sanction or penalty be imposed as against them including an order to demolish all the illegal and unauthorized structures built.



4. That the costs of this application be provided for;

It was based on the grounds that this honourable court, by its order made on October 28, 2019 and issued on November 8, 2019 restrained the plaintiffs from and/or anyone else claiming through or under them from committing acts of waste or putting up any structures or developments on the property known as Plot No 322/I/MN. The said order was served on the plaintiffs' advocates on November 15, 2019. The plaintiffs have infringed and/or breached the aforesaid orders and persist to do so. The plaintiffs have no regard for the rule of law and/or authority or dignity of this honourable court and they have not only wantonly and deliberately breached the orders of this honourable court but persist in doing so. The plaintiffs' conduct is likely to interfere with and/or impede or seriously prejudice the course of justice in these proceedings. The plaintiffs are continuing with their contumelious and malevolent conduct without any regard whatsoever for the rule of law and it is only fair and in the interests of justice and to preserve the integrity of this honourable court as well as uphold the rule of law that this application be heard expeditiously and be allowed.

2. This court has considered the application and submissions therein. The application is based on the grounds that this honourable court, by its order made on October 28, 2019 and issued on November 8, 2019 restrained the plaintiffs from and/or anyone else claiming through or under them from committing acts of waste or putting up any structures or developments on the property known as Plot No 322/I/MN. The said order was served on the plaintiffs' advocates on November 15, 2019. The plaintiffs have infringed and/or breached the afore stated orders and persist to do so. 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.”

3. 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”

4. 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 mean time the court directs his release”

5. 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.”

6. 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 vs Babarini 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”

7. In the instant case it is on record that the court, by its order made on October 28, 2019 and issued on November 8, 2019 restrained the plaintiffs from and/or anyone else claiming through or under them from committing acts of waste or putting up any structures or developments on the property known as Plot No 322/I/MN. The said order was served on the plaintiffs’ advocates on November 15, 2019. 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. There is no stay in this matter and court orders must be obeyed and parties are advised with order 11 and take a hearing date in this matter. I find that this application is merited and I make the following orders;

1. That the plaintiffs/respondents herein are to maintain the *status quo* and restrain from and/or anyone else claiming through or under them from committing acts of waste or putting up any structures or developments on the property known as Plot No 322/I/MN, 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 26TH DAY OF JULY 2022.

N.A. MATHEKA

JUDGE

