



**Muthusi & 2 others (Being Officials of Kivaa 15 Alive Self Help Group) v Nyolo (Environment and Land Appeal E045 of 2021) [2022] KEELC 2574 (KLR) (20 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2574 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND APPEAL E045 OF 2021**

**A NYUKURI, J  
JULY 20, 2022**

**BETWEEN**

**RAPHAEL MULINGE MUTHUSI ..... 1<sup>ST</sup> APPLICANT  
FRANCIS MAITHYA MUTAVI ..... 2<sup>ND</sup> APPLICANT  
JAMES MUTISYA WAMBUA ..... 3<sup>RD</sup> APPLICANT  
BEING OFFICIALS OF KIVAA 15 ALIVE SELF HELP GROUP**

**AND**

**MARY NDILA NYOLO ..... RESPONDENT**

**RULING**

**Introduction**

1. Vide an application dated 29<sup>th</sup> October 2021, the Applicant sought for the following orders;
  - a. Spent.
  - b. Spent.
  - c. That this court do punish and penalize the Respondent herein Mary Ndila Nyolo for continued disregard and disobedience of the court orders made by this court on 21<sup>st</sup> October with an imprisonment for a period of six (6) months or a pending of Kenya shillings one Million (Kshs. 1,000,000/=).
  - d. That costs of this application be awarded to the applicant.
2. The application is supported by the affidavit of the applicant sworn on the 29<sup>th</sup> October 2021. The Applicants case is that on 21<sup>st</sup> October 2021, in the presence of both advocates, this court ordered for maintenance of status quo, pending the court's ruling to be delivered on 26<sup>th</sup> January 2022. Further



that thereafter, the Respondent stepped up construction on the suit property in disregard of the court orders and therefore the Respondent need not participate in court proceedings if she's bent on disobeying court orders and the court has to send a clear message to her that disobedience of court orders attracts serious consequences.

3. The application is opposed. Mary Ndila Nyolo, the Respondent herein filed a replying affidavit sworn on 16<sup>th</sup> November 2021 where she stated that the Applicant was only interested in derailing the expeditious disposal of this matter, as she is the one in occupation and that the orders by the court were not meant for her to relinquish possession. It was further her assertion that when the court issued the orders of status quo she has not visited the suit property nor done any constructions thereon. She maintained that she knows the consequence of disobedience of court orders and has not done any thing in contravention thereof as demonstrated by the fact that there is no evidence for such disobedience and that there were buildings on the suit property long before the suit was filed.
4. The Respondent also filed supplementary affidavit and stated that the applicant visited the suit property sometime in November 2021 and demolished buildings on her property, which resulted in them being charged in Kithimani Principal Magistrates Court with the offence of malicious damage to property and that the application herein is a delaying tactic.
5. The application was canvassed by way of written submissions. On record are the Respondent's submissions filed on 10<sup>th</sup> January 2022, which the court has considered. No submissions were filed by the Applicant.

### **Analysis and Determination**

6. I have considered the application, the replying and supplementary affidavits and submissions. The issue that arise for determination is whether the Respondent is in contempt of the court order of 21<sup>st</sup> October 2021.
7. Contempt of court is that conduct which defies the court's authority. The authority of the court is central in the administration of justice and therefore, contempt essentially impairs the fair and efficient administration of justice. The Black's Law Dictionary 11<sup>th</sup> Edition defines contempt as follows;

The act or state of despising. The quality, state, or condition of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice, it is punishable, usually by fine or imprisonment.
8. The importance of compliance with court orders was stated in the case of *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another* [2005] KLR in the following words;

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.
9. Three elements must be established to satisfy the court of contempt, namely, that the order said to have been disobeyed must state clearly what ought or ought not to have been done, the alleged contemnor must have had knowledge of the order and the alleged contemnor must have willfully done what was prohibited or failed to do what the order compelled him to do. In that regard, in the case of *Katsuri Limited v Kapurchand Depor Shab* [2016] eKLR, the court held that;



In order for an applicant to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, knowledge of the terms by the Respondent, failure by the Respondent to comply with the terms of the order.

10. Contempt of court is a serious matter and therefore any person who alleges the existence of contempt must prove on a standard higher than the proof required for balance of probability, although the proof is slightly lower than that of beyond reasonable doubt expected in criminal offences. This position was succinctly captured in the case of *Gatharia K. Mutikika v Babarini farm Limited* [1985] KLR, as follows;

A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily...It must be higher than proof on a 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 criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature.

However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge...

11. In the instant matter, I note that the court order made on 21<sup>st</sup> October 2021, has not been attached to this application. While the Respondent does not deny knowledge of the order, she contends that she has never visited the suit property nor constructed on the same as alleged or at all, after issuance of the said order, and that it is the Applicants who damaged her buildings leading to them being charged in court for malicious damage to property. It is trite law that he who alleges must prove. Having considered the application, I agree with the Respondent that indeed there is no evidence of disobedience of the order made on 21<sup>st</sup> October 2021. No such proof has been tendered by the applicant to show that the Respondent acted in contempt of the court order.
12. In the premises, I find and hold that the application dated 29<sup>th</sup> October 2021 lacks merit and the same is dismissed with costs to the Respondent.
13. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 20<sup>TH</sup> DAY OF JULY 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

In the presence of;

Mr. Munyao for the Respondent

No appearance for the Appellant

Ms Josephine Misigo - Court Assistant

