



**Ravat & another v County Government of Kisumu & another (Constitutional Petition E10 of 2021) [2022] KEELC 3280 (KLR) (5 August 2022) (Ruling)**

Neutral citation: [2022] KEELC 3280 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**CONSTITUTIONAL PETITION E10 OF 2021**

**A OMBWAYO, J**

**AUGUST 5, 2022**

**IN THE MATTER OF ARTICLES 1,2,3, 10(1) &(2),19,20 (1),(2) & (4),21,22 (1) & (3),25 ( C), 27(1) &(2) ,40,43,47 (1) & (2), 50 (1),61(1), 64(B), 67,68,73 (1), 75 (1), (2) & (3),159,162,176,184 & 232 (1)OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THE ENVIRONMENT AND LAND COURT ACT,2012**

**AND**

**IN THE MATTER OF THE LAND REGISTRATION ACT,2012**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT,2015**

**AND**

**IN THE MATTER OF THE COUNTY GOVERNMENT ACT,NO.17 OF 2012**

**AND**

**IN THE MATTER OF THE URBAN AREAS AND CITIES ACT,NO.13 OF 2012**

**AND**

**IN THE MATTER OF THE NATIONAL LAND COMMISSION ACT, NO.5 OF 2012**

**AND**

**IN THE MATTER OF THE LEADERSHIP AND INTEGRITY ACT NO. 19 OF 2012**

**AND**

**IN THE MATTER OF THE PUBLIC OFFICER ETHICS ACT NO. 4 OF 2003**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS), PRACTICE AND PROCEDURE RULES,2013**



**BETWEEN**

**ASHISH CHANDRAKANT RAVAT ..... 1<sup>ST</sup> PETITIONER**

**VINODKUMAR RAMDATMALL PAL ..... 2<sup>ND</sup> PETITIONER**

**AND**

**THE COUNTY GOVERNMENT OF KISUMU ..... 1<sup>ST</sup> RESPONDENT**

**CITY MANAGER, KISUMU COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application before court is dated 12/4/2022. The applicants/Petitioners seek orders that this court be pleased to find that the County Government of Kisumu and the City Manager, Kisumu, Mr. Michael Abala Wanga or anyone holding the office of City Manager, Kisumu City are in contempt of the orders of this court made on May 17, 2021 and confirmed on September 23, 2021 and that upon finding that the parties and persons named herein above are in contempt of the orders of this court afore-stated, this court be pleased to direct that the City Manager, Kisumu City, Mr. Michael Abala Wanga or any person holding the office of city Manager, Kisumu City be arrested and that he be sentenced to serve such prison sentence for such a period of time as the court may in its discretion direct for being in contempt of the orders made on May 17, 2021 and confirmed on September 23, 2021.
2. Moreover, that upon finding that the parties and persons named in prayer 2 afore-going are in contempt of the orders of this court afore-stated, this court be pleased to impose such fine or damages as it may in its discretion set to be paid by each of the Respondents, whether jointly or severally for being in contempt of the orders of this court made May 17, 2021 and confirmed on September 23, 2021 and in default the properties or personal properties of the Respondents, be attached and sold to recover such fine and damages.
3. Furthermore, that upon finding that the parties and persons named in prayer 2 aforegoing are in contempt of the orders of this court, this court be pleased to direct them to purge the contempt in such a manner as the court may direct failing which they be denied any further audience in this matter until such a time as they will have purged the contempt.
4. The application is supported by the affidavit fo Vinodkumar Ramdatmall Pal sworn on 12/4/2022 and filed on the same date. The facts discerned from the affidavit are that on May 17, 2021, this court issued conservatory orders ex parte in terms of Prayer 2 of the application dated March 24, 2021. The order was extracted and served upon the Respondents on May 20, 2021. The orders injuncted the Respondents from trespassing upon, interfering with the Applicants' use and possession of the parcels of land listed in prayer 2 of the application.
5. The orders made on May 17, 2021 were confirmed on September 23, 2021 after the court heard the both sides to this dispute. In their reply to the application dated March 24, 2021, the Respondents admitted that they are the ones who had entered the properties demolished the nearly complete apartments that the Applicants had constructed thereon, saying that they did so with the permission of the persons they alleged were the legal owners of the properties who had permitted them to settle traders in the properties.



6. That Indeed, in a Press Release on January 28, 2021, the 2<sup>nd</sup> Respondent confirmed that they had repossessed public land around Kibuye Estate which they intended to use as alternative market space for traders around Garrissa Lodge, Apinid Street and Gor Mahia Road. The land they were referring to comprise the suit properties.
7. That the suit properties were still unoccupied by the May 17, 2021 when the court issue interim orders. Subsequently and despite the orders of the court made on the said date. The Respondents went on to settle strangers in an opaque arrangement in which rent is paid, not even to the alleged legal owners who the Respondents claimed are Kisumu Boys High School and Kisumu Girls High School, but to shadowy cartels working for and at the behest of individuals within the rank and file of the County Government of Kisumu. There was never a resettlement of traders as was claimed and there is no rent that is paid to the public coffers through the County Government of Kisumu, all done in connivance with the Respondents.
8. The Respondents have continued to contravene the orders by continuing to have strangers in the subject property despite demands that they move them from the subject property.
9. The constitutional and statutory principles decreeing the central role of respect for the courts in the administration of justice are not mere platitudes but are important component in the administration of justice.
10. The applicant contends that it is important that this court grants the orders sought as this application is in the public interest and in order to safeguard the authority and dignity of the court and ensure the smooth administration of justice and facilitate the just, fair and proportionate determination of this suit.
11. In the replying affidavit, Michael Abala Wanga, the City Manager Kisumu City states that the respondents are avid upholders of the rule of Law and respect the court. He denies that the respondents have disrespected the court and deny settling traders in the suit land. According to Mr. Michael Abala Wanga, the respondents have never set foot on the property since the court issued its order. The said County Manager states that the respondents can't settle traders on a piece of land without going through an official process where rent is paid and records are kept. The applicant filed written submissions whose gravamen is that that the court issued the orders that were served upon the Respondents. That the orders were issued on the backdrop of a threat by the Respondents to take over the properties and to settle traders on the properties. That there are indeed traders occupying the properties and that they moved in after the orders were issued and served upon the Respondents. That Respondents did receive a complaint by the Petitioners about the invasion of the properties vide a letter dated March 21, 2022 and that they did not deny the contents thereof and did not act on the complaint. That the Respondents are the Institutions in-charge of authorizing developments with the City of Kisumu and that they have taken no step to stop the construction of structures in the suit properties.
12. The petitioners contend that they moved the court when the Respondents threatened to settle traders in the properties. Traders indeed settled on the properties and that fact is no longer moot and cannot be a coincidence. The very thing that the Respondents threatened to do and which the orders of the court sought to restrain, has happened. The Respondents have sat back and done nothing. The court must ask itself whether it can be said on a balance of probabilities that the Respondents have no idea about what is going on.
13. I have considered the application, supporting affidavit and submissions on record and do find that the import of the order issued by the court on May 17, 2021 was that the respondent be restrained from trespassing upon, interfering the applicants use and possession of the suit parcels of land. It was not



denied by the respondent that the order was served but it is denied that the order was disobeyed. Mr. Michael Abala Wanga states that they have not put any stranger in possession of the suit property. Mr. Abala Wanga proceeds to state that if they were to settle traders on the suit property, it would be done officially.

14. This court observes that in applications for contempt, the standard of proof is slightly above “balance of probability” but below “beyond shadow of doubt”. In law, 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 the terms of the order or injunction or undertaking were clear and unambiguous and were binding on the defendant and that the defendant had knowledge of or proper notice of the terms of the order; the defendant has acted in breach of the terms of the order; and last but not least, the defendant's conduct was deliberate. There is a myriad of cases that assist the court in the determination of the aforesaid issues. Dealing with the question of contempt in *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)

15. In *T. N. Gadavarman Thiru Mulpad v Ashok Khot and Anor* [2006] 5 SCC, the Supreme Court of India also emphasized on the dangers of disobeying Court orders, thus:

“Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with.”

16. Contempt of Court is in the nature of criminal proceedings and, therefore, proof of a case against a contemnor is higher than that of balance of probability. This is because liberty of the subject is usually at stake and the applicant must prove wilful and deliberate disobedience of the court order, if he were to succeed. This was aptly stated in *Gatharia K. Mutikika v Baharini Farm Limited* [1985] KLR 227, that:

“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... Recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the party of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and on an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not."

17. Due to the gravity of consequences that ordinarily flow from contempt proceedings, it is proper that the order be served and the person cited for contempt should have had personal knowledge of that order.
18. In this matter, the applicant has proved that the order is clear and un-ambiguous and binding and that the respondents had knowledge of the same however they have failed to prove that the traders in the suit parcel of land were resettled by the respondents. There is no evidence in terms of any agreement between the respondents and the traders or evidence of any rent received by the respondents from the traders. I'm not convinced that the respondents willfully settled the traders on the disputed parcels of land or at all and therefore the applicants have not discharged their burden of proof that the respondents are in contempt of this courts orders.
19. The upshot of the above is that the applicants have not proved that the respondents have disobeyed this court's order. The application is dismissed with costs.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 5th DAY OF AUGUST, 2022.**

**ANTONY OMBWAYO**

**JUDGE**

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020.

