



**Serem & another v Alisonya (Environment & Land Case 391 of 2015)  
[2022] KEELC 12625 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12625 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 391 OF 2015  
SM KIBUNJA, J  
SEPTEMBER 23, 2022**

**BETWEEN**

**WILFRED SEREM ..... 1<sup>ST</sup> PLAINTIFF**

**EVEERLYNE CHEBITOK CHELUGUI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**ELIMINA ALISONYA FRANCIS ..... DEFENDANT**

**RULING**

1. Vide the notice of motion dated the August 2, 2021 the defendant moved the court for orders that;
  - a. Spent.
  - b. That this court do summon the plaintiffs Wilfred Serem and Everlyne Chebitok Chelugui to appear before it and show cause why they should not be committed to civil jail for being in contempt of court orders issued on April 28, 2021 by Hon Justice Kibunja.
  - c. That the plaintiffs Wilfred Serem and Everlyne Chebitok Chelugui be committed to civil jail for a period of six months or as the court may deem fit for flagrantly and deliberately disobeying this honourable court's orders issued on April 28, 2021 despite being aware of the said orders.
  - d. That should the plaintiffs Wilfred Serem and Everlyne Chebitok Chelugui fail to attend court on the date preferred by court, warrants of arrest be issued.
  - e. That costs of this application be awarded to the defendant.

The application is based on the ten (10) grounds on its face and supported by the affidavits of Elimina Alisonya Francis, the defendant, sworn on the August 2, 2021 and March 24, 2022. The defendant's case is that by Judgment delivered on the April 28, 2021 the plaintiffs' claim for adverse possession over the suit property was denied, but they have disobeyed the court orders and continued utilizing



the property, thereby causing the defendant irreparable harm. That the plaintiffs' actions amount to contempt of court, as their application for stay of execution filed in Court of Appeal Civil Appl No E098 of 2021 was dismissed on the November 5, 2021. The plaintiffs should be held accountable and punished for the blatant disobedience in order to uphold the dignity and authority of the court. The defendant deposed that he had met the criteria to successfully plead contempt to the required standard of above balance of probabilities and that the application should thus be allowed.

2. The application is opposed by the plaintiffs through the replying affidavit sworn by Everline Chebitok Chelugui, the 2<sup>nd</sup> plaintiff, on the March 14, 2022. It is the plaintiffs' case that the court made only one order at paragraph 7 of the judgement stating that;

“that flowing from the foregoing, the court enters judgement for the plaintiffs against the defendant for refund of Kshs 209,000 (Kenya Shillings Two Hundred and Nine Thousand) being the purchase price received under the sale agreement dated February 9, 1993 with interest at Court rates from the date of filing the suit until payment in full and costs.”

That the only positive order was for the payment of Kshs 209,000/- together with interest, which is Kshs 447,752/- making a total of Kshs 653,752/-. There was also an order that the plaintiff shall have costs of the suit. That nothing else was ordered against the decree holder herein. Dissatisfied by the judgment, the plaintiffs filed an application for stay pending appeal, but the court observed among others that there was no order in the judgement that was capable of being executed against the plaintiffs. Further, the defendant herein has never filed a suit against the plaintiffs for possession of the land, and hence no order capable of being disobeyed has been issued. It was the plaintiffs' deposition that there is no order stopping them from utilization of the land as alleged, and that the defendant has not complied with the order requiring him to refund the purchase price with interests, and the costs have not equally been paid. They conceded that they would not execute the decree until the determination of the appeal by the Court of Appeal. That the application for contempt is baseless and that the plaintiffs had not been served with any order capable of obedience and disregarded it. It was their case that the application should be dismissed.

3. The court issued directions on filing and exchanging submissions on the March 10, 2022. The learned counsel for the defendant filed their submissions dated the March 24, 2022, but none was filed by or for the plaintiffs. It is the defendant's submissions that she had discharged the necessary burden of proof required in contempt of court proceedings, which is of the standard of above the balance of probabilities and below reasonable doubt. The defendant relied on the case of *Econet Wireless Ltd v Minister for Information & Communication of Kenya & another* (2005) eKLR for the proposition that court orders are not issued in vain and must be obeyed. The defendant also relied on the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 others* (2013) eKLR where the court held as follows;

“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. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed.”

It was finally submitted that the photographs annexed to her affidavit have not been challenged, and that the sign put up protecting the interests of the estate of the late Paulo Mulinya Mudunya, which are



comprised in the suit property pending final determination of the succession proceedings in Eldoret High Court P&A No 201 of 2005, as well as the fact that the plaintiffs still occupy the suit property have not been challenged. Further the Court of Appeal found that the plaintiffs' application lacked merit and dismissed the same. In light of this, the defendant submitted that her application ought to be allowed.

4. The following are the issues for the court's determinations;
  - a. Whether the defendant has established the existence of a valid order issued on the April 28, 2021 stopping or barring the plaintiffs from utilizing the suit land, and if so, whether the defendant has proved to the standard required that the plaintiffs have disobeyed the said order.
  - b. Who pays the costs.
5. The court has carefully considered the grounds on the application, affidavit evidence, submissions filed, superior courts decisions cited thereon and come to the following determinations;

- a. That contempt of court is that conduct or action that defies or disrespects authority of court. *Black's Law Dictionary* 9<sup>th</sup> Edition, defines contempt as:

The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.

- b. Contempt is conduct that impairs the fair and efficient administration of justice. Section 5 of the *Judicature Act* confers jurisdiction on the superior courts to punish for contempt. It provides that;

“(5)(1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England and that power shall extend to upholding the authority and dignity of Subordinate Courts.”

The Environment and Land Court as currently constituted is created under article 162(2)(2) which provides as follows:

- (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-
  - (a) employment and labour relations; and
  - (b) the environment and the use and occupation of, and title to, land.

The above constitutional provision leaves no doubt that the Environment and Land Court, being a superior court with the status of the High Court, has similar powers to those assigned to the High Court in all matters arising out of environment and land. Therefore, the term 'High Court' in section 5(1) of the *Judicature Act* should be understood to include the Employment and Labour Relations Court and the Environment and Land Court established under article 162(2) of the *Constitution 2010*.

- c. Further, section 29 of the *Environment and Land Court Act* No. 19 of 2021 provides that;

“ Any person who refuses, fails or neglects to obey an order or direction of the court given under this Act, commits an offence, and shall, on conviction, be liable to a fine



not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or both.”

*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.”

In the case of *Johnson vs Grant*, 1923 SC 789 at 790 Lord President Clyde stated that:

“... The law does not exist to protect the personal dignity of the judiciary nor the private rights of parties or litigants. It is not the dignity of the court which is offended. It is the fundamental supremacy of the law which is challenged.”

- d. A court order is a directive that must be complied with, and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this court will not be the one to open that door. In the case of *Kenya Tea Growers Association v Francis Atwoli and 5 others* [2012] eKLR Lenaola J (as he then was), cited with approval the case of *Clarke and Others v Chadburn & others* [1985] 1All ER (PC), 211 in which the court observed that:

“I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal ... even if the defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it.”

- e. In the case of *Econet Wirelss Ltd v Minister for Information & Communication of Kenya & another* [2005] eKLR, the court held that;

“Where an application for committal for contempt of court orders is made the court will treat the same with a lot of seriousness and urgency and more often will suspend any other proceedings until the matter is dealt with and if the contempt is proven to punish the contemnor or demand that it is purged or both. For instance, an alleged contemnor will not be allowed to prosecute any application to set aside orders or take any other step until the application for contempt is heard. The reasons for this approach are obvious- a contemnor would have no right of audience in any court of law unless he is punished or purges the contempt.”

In *R v Attorney General & another exparte Mike Maina Kamau* (2020)eKLR, the court stated that an applicant for contempt of court should prove that the terms of the order were clear and unambiguous and binding on the defendant; that the defendant had knowledge or proper notice of the orders; that he acted in breach of the terms of the order and that his conduct was deliberate.

- f. That in light of the above analysis of the law and upon perusing the judgement delivered by this court on the April 28, 2021, it is clear that the court entered “judgement for the plaintiffs against the defendant for refund of Kshs 209,000 (Kenya Shillings Two Hundred and Nine Thousand) being the purchase price received under the sale agreement dated the February 9, 1993 with interest at court rates from the date of filing the suit until payment in full and costs.”



It is discernable from the judgement that the court did not make any determination on which party or parties were to use or stop using the suit land. Put differently, the court did not bar or stop any party or parties from utilizing the suit land.

- g. That further, the defendant herein has not sought and obtained any such order against the plaintiffs that could have been disobeyed, and be the basis of the contempt proceedings. The court's judgement from the pleadings and deposition in the instant application, is yet to be complied with by the defendant, and the plaintiffs are yet to commence any execution proceedings. It is a fact that the plaintiffs were aggrieved by the court's decision and filed a notice of appeal. They also moved to the court of Appeal in Civil Appl No E098 of 2021 seeking for temporary injunction order, which the court declined to grant in its ruling of November 5, 2021. The court therefore finds that the prerequisites required to sustain a finding of contempt of court have not been met and accordingly, the defendant's application is without merit.
  - h. That as the defendant has failed in her application, the plaintiffs are entitled to the costs in terms of section 27 of the Civil Procedure Act chapter 21 of Laws of Kenya.
6. In view of the foregoing findings, the court orders as follows;
- a. That the defendant's notice of motion dated the August 2, 2021 is without merit and is hereby dismissed.
  - b. That the defendant do pay the plaintiffs' costs.

It is so ordered.

**DATED AND VIRTUALLY DELIVERED THIS 23<sup>rd</sup> DAY OF SEPTEMBER, 2022**

**S. M. Kibunja, J.**

**Environment & Land Court - Eldoret**

**IN THE VIRTUAL PRESENCE OF;**

PLAINTIFFS: Absent.....

DEFENDANT: Absent.....

COUNSEL: Ms. Moraa for Defendant/Applicant.....

COURT ASSISTANT: ONIALA

S. M. Kibunja, J.

Environment & Land Court - Eldoret

