



**Sanders v County Government of Lamu (Civil Case E18 of 2022)  
[2022] KEELC 13843 (KLR) (26 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13843 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
CIVIL CASE E18 OF 2022  
MAO ODENY, J  
OCTOBER 26, 2022**

**BETWEEN**

**KATHERINE ISOBEL MARY SANDERS ..... PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF LAMU ..... DEFENDANT**

**RULING**

1. This ruling is in respect of a notice of motion dated March 25, 2022 by the plaintiff/applicant seeking the following orders; -
  - a. Spent.
  - b. That this honourable court be pleased to issue an order directing that the OCS Lamu Police Station be empowered/ authorized to arrest the 1<sup>st</sup> defendant herein and avail him before this court on a date to be set by this court for the purposes of being punished for being in contempt of the orders of this court given on March 11, 2022.
  - c. That the honourable court be pleased to grant orders that the respondent herein be ordered to pay a fine of Kenya Shillings two hundred thousand (Kshs 200,000/=) or in the alternative be committed to civil jail for six (6) months for being in contempt of the orders of this court given on the March 11, 2022 or both.
  - d. That the honourable court be pleased to issue such further orders as it shall deem fit and in the circumstances of this case.
  - e. That the cost of this application be provided for.
2. The applicant relied on the grounds on the face of the application together with her supporting affidavit whereby she deponed that upon this court issuing an order of temporary injunction and the same having been served upon the 1<sup>st</sup> respondent, the 1<sup>st</sup> respondent by himself or through proxies



continued trespassing on the beach front of land parcel Lamu/ Block 1V/8, by erecting structures thereon and constructing fibre glass boats in violation of the court order.

3. The applicant further stated that the 1<sup>st</sup> respondent has on several occasions frustrated her by not obeying the court order.
4. In response to the application the 1<sup>st</sup> respondent swore a replying affidavit whereby he deponed that he was indeed served with a court order issued on the March 11, 2022 and he has not opened, operated or carried out any activities or construction of any fibre glass boats or erected any structure after the service of the court order
5. It was the 1<sup>st</sup> respondent's case that he has not disobeyed the court orders and that the applicant has not demonstrated how the status quo has been altered. The respondent stated that he is awaiting the outcome of the application for injunction and cannot disobey the temporary order of injunction that had been granted to the plaintiff. and urged the court to dismiss the application.
6. Counsel agreed to canvas the application vide written submissions which were duly filed. The 2<sup>nd</sup> respondent indicated that it was not participating in the application as it did not touch on them.

#### **Plaintiff/applicant's submissions.**

7. Counsel submitted that a party to a suit will be punished for breach of orders of injunction where it can be demonstrated that the orders of injunction were clear and unambiguous, according to counsel, the 1<sup>st</sup> respondent was aware of the court order but proceeded to contravene the terms of the injunction.
8. Counsel further submitted that the purpose of punishment for breach of terms of an injunction is to maintain dignity of the court and the process of administration of justice as was held in the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 others [2013] eKLR*.
9. Ms Bosibori also relied on the provisions of section 5 (1) of the *Judicature Act* and order 40 rule 3 of the *Civil Procedure Rules* and submitted that the 1<sup>st</sup> respondent continued with construction of the fibre glass boats thereby interfering with the applicant's quiet use and access to her parcel of land.
10. Counsel further cited the case of *Cecil Miller vs Jackson Nkeru & Another (2017) eKLR* and urged the court to commit the respondent to six months' imprisonment for contempt of court.

#### **1<sup>st</sup> respondent's submissions**

11. Counsel submitted that the 1<sup>st</sup> respondent was duly informed on the consequences of disobeying court orders and conducted himself within the confines of those orders.
12. Counsel reiterated the 1<sup>st</sup> respondent's assertion that he has neither opened, operated nor carried out any activities or construction of any fibre glass boats as alleged by the plaintiff and that the present application only seeks to mislead this court.
13. Mr Omwancha submitted that the applicant's proposition of a fine of Kshs 200,000/- is not tenable as it lacks supportive legal provision and urged the court to dismiss the application with costs.

#### **Analysis and determination.**

14. It should be noted that the 1<sup>st</sup> respondent has candidly admitted in his replying affidavit that he was duly served with an order dated March 11, 2022 and that after service of the said order he complied by not carrying out any activities of the suit land.



15. This means that the issue whether the respondent was duly served with an order does not arise as he has acknowledged service of the order and that he understood the terms of the order.

16. 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.'

17. The provisions of order 40 rule 3(1) of the Civil Procedure Rules stipulate as follows: -

In cases of disobedience, or of 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.

18. Similarly section 29 of the *Environment and Land Court Act*, provides that contempt of court is an offence punishable, upon conviction to a fine of not exceeding Kshs 20,000,000 or to imprisonment for a term not exceeding two years, or to both, if any person refuses, fails or neglects to obey an order or direction of the court given under the act.

19. The essential elements of civil contempt are well settled in the case *Katsuri Ltd -vs- Kapurch and Depar Shah (2016) eKLR* where Mativo J stated; -

' Writing on proving the elements of civil contempt, learned authors of the book Contempt in Modern New Zealand have authoritatively stated as follows: -

'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: -

- a. the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- b. the defendant had knowledge of or proper notice of the terms of the order;
- c. the defendant has acted in breach of the terms of the order; and
- d. the defendant's conduct was deliberate.

20. As earlier stated that the 1<sup>st</sup> respondent has acknowledged that he was served with an order which were clear and binding on him, the first limb of the essential elements which must be proved is already sorted out. The order was clear and unambiguous hence binding on the respondent

21. The respondent also had proper notice of the terms of the order, what is issue is whether the respondent acted in breach of the terms of the order and if so whether the respondent's conduct was deliberate.

22. Contempt of court proceedings are of a criminal nature and the applicant is under an obligation to prove that the respondent acted in breach of the terms of the order and that the conduct was deliberate. In the Supreme Court of India in *Mahinderjit Singh Bitta v Union of India & Others 1 A NO 10 of 2010* the court held that:-

' In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and willful violation of the order of the court, even to constitute a civil contempt. Every party is lis before the court and even otherwise, is



expected to obey the orders of the court in its spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution.'

23. It should also be noted that contempt proceedings, the dignity of the court is paramount and the matter is no longer between the parties but before the court to safeguard its authority and dignity as was held in the case of *Republic v The Speaker, Nairobi City County Assembly & another Ex-Parte Robert Ayisi, County Secretary, Nairobi City County [2017] eKLR* where Odunga J (as he then was) that; -

' in contempt of court proceedings as opposed to execution proceedings, the dispute is no longer just between the parties before the court, but the matter moves to higher pedestal as the dignity of the court is now brought into question by acts of impunity committed by the contemnor,

24. It is not enough for a party to allege that an order has been disobeyed without establishing or demonstrating the status of the substratum of the case before and after. In this case the applicant has not established the status before the order was granted and after the order and the alleged disobedience of the court order.

25. Even though the applicant attached photographs to try an establish that the respondent was in contempt, the same was inadequate to aid in the application for contempt which do as earlier alluded to. Section 9 of the *Evidence Act* provides that ;-

' Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by such a fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.'

26. The applicants were under a duty to place the photographs in a periodic context in order for this court to determine whether the actions captured in the photos occurred at a time when the same would have amounted to acting in contempt of this court's orders.

27. From the foregoing, I find that the application lacks merit and is therefore dismissed with each party bearing their own costs. The respondent is reminded that the order is still in force hence must be obeyed until vacated.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 26<sup>TH</sup> DAY OF OCTOBER, 2022.**

**MA ODENY**

**JUDGE**

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.

