



Living Waters E.A.P.C ((suing thro' the Registered Officials Rev. Andrew Nyaga, Fredrick Nteere & Cornelius Mworio as Chairman, Secretary & Treasurer respectively)) v East Africa Pentecostal Churches ((sued thro' its Registered Trustees, Rev. Justus Kinoti Ringera, Charles Lewa, Sospeter Njeru & Andrew Kinyamu)) (Environment and Land Appeal 96 & 111 of 2008 (Consolidated)) [2022] KEELC 13649 (KLR) (19 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13649 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL 96 & 111 OF 2008 (CONSOLIDATED)
CK NZILI, J
OCTOBER 19, 2022**

BETWEEN

**LIVING WATERS E.A.P.C RESPONDENT
(SUING THRO' THE REGISTERED OFFICIALS REV. ANDREW NYAGA,
FREDRICK NTEERE & CORNELIUS MWORIA AS CHAIRMAN, SECRETARY
& TREASURER RESPECTIVELY)**

AND

**EAST AFRICA PENTECOSTAL CHURCHES RESPONDENT
(SUED THRO' ITS REGISTERED TRUSTEES, REV. JUSTUS KINOTI
RINGERA, CHARLES LEWA, SOSPETER NJERU & ANDREW KINYAMU)**

RULING

1. By an application dated October 2, 2019 the court is asked to cite the respondents namely Fredrick Nteere and Cornelius Mworio hereinafter the 1st and second citees for contempt of court for going against the final decree of this court issued and dated July 22, 2019 and the one issued in Meru CMCC No727 of 2004 dated October 22, 2009.
2. The grounds are listed on the face of the application and in the attached affidavit sworn by Rev. Samwel Muguna Henry on October 1, 2019.
3. The applicants aver that the citees have defied the two decrees of the court, despite knowledge or service upon them and more so being the national officials of the church, have encouraged their pastors, lay preachers and its members to continue entering into, remaining, holding onto, excluding and



interfering with the applicants suit premises which acts amount to assault on the dignity and the authority of this court.

4. It was averred the citees were the secretary and treasurer of and the appellants in this appeal hence constitute the top leadership of the Church.
5. The applicant averred the judgment at the lower court was delivered in the presence of the citees alongside their advocates whose effect permanently barred them from interfering with the suit premises namely L.R Nos. Nyaki/Mulathankari/250, Ntima/Igoki/2885, Nyaki/Kithoka/576, Nyaki Chugu/461 and NYaki/Kithoka/2267.
6. That the respondents had appealed against the decree in two appeals No 96/08 and 111/08 which were consolidated, determined and re-amended on June 3, 2019 after their Appeal No 96/08 was dismissed and the applicant's appeal No111/08 allowed.
7. That a decree was extracted and was served upon the citees on August 3, 2019 as per the affidavit sworn by Geoffrey Mburugu M'Mukira dated August 5, 2019. Subsequently the citees were also served with a letter on August 13, 2019 by the said process server.
8. The applicant stated they took steps to take over the suit properties by posting their pastors to the prayer houses on August 4, 2019 to take care of them who reported but found persons posted therein by the respondent, preaching in those churches, who flatly denied them access, arguing that they had been instructed by the citees to ignore those decrees and continue holding on the suit properties. The pastors reported back to the applicant who advised them to avoid confrontation as they seek redress in court.
9. That the citees being fully aware of the decrees of this court have continued to engage in acts that are calculated to disrespect the court, lower its dignity or authority and should be punished by this court, more so as the top leadership of the judgment debtor, they have continued to exclude the decree holder from the suitland.
10. The application was opposed by the replying affidavits sworn by the citees; Cornelius Mworira M'Ambutu and Fredrick Nteere Rukunga on December 19, 2019 respectively.
11. On his part the 2nd citee admitted being the chairman of the respondent but denied that the Rev. Samuel Muguna Henry was a trustee of the applicant or an authorized person to swear the supporting affidavit. That the respondent was a registered church with its members different and separate from the applicant who do not attend church services at the applicant's church grounds which they own, and have developed as per photographs annexed as CMM1 {a}, {b} and {c} respectively, which are held by its trustees but not the applicant.
12. That as a member of Themba Living Waters EAPC he denied being served with any court decrees/orders at Ruiru market, church or home as alleged. He therefore believed the affidavit of service was false. Further he said the matter was pending in the Court of Appeal as per annexed memorandum of appeal hence there was need to maintain the status quo as they awaited the outcome hence the application lacked merits, was an abuse of the court process and should be dismissed.
13. For the 1st cite, Fredrick Nteere Rukunga he deponed that the posting letters attached to the affidavit by the applicant were signed by a person who was not a trustee of the applicant. That the application was brought in bad faith given the respondent's members were former members of the applicant prior to the registration of the respondent's churches. He stated the applicant was annexing their churches and other properties on their land, which parcels were held by their trustees who the applicant.



14. On service of the decrees, the deponent denied such service or receipt of the posting letters, more so since he was no longer the general secretary of the respondent after he resigned with effect from 2013 as per the minutes marked FNR “1”. Therefore, he no longer conducted any duties for the respondent. Further he stated he attended church at Munithu Living Waters EAPC whose land was not part of the named properties hence the application was actuated by malice, bad faith and was lacking merits.
15. With leave of court, on February 18, 2020 parties agreed to canvass the application through viva voce evidence.
16. PW 1 Bishop Samuel Mugendi Henry adopted his supporting affidavit sworn on October 2, 2019. He told the court the citees alongside Andrew Nyaga had sued on behalf of Living Waters EAPC as treasurer, chairman and Bishop now deceased. He produced the judgment and decree as exh (1) & (2) in the lower court, judgment in this court and decree as exh (3) and (4), affidavit of service as exh (5), letter dated August 9, 2019 as exh (6), posting letters of pastors as exh 7 (a) – (f). He testified the respondents were still using their premises yet the citees had responsibility over the pastors and their members who had defied the decree hence the application for contempt.
17. In cross examination, he confirmed that the initial suits were filed through the registered trustees or officials in office at the time but could not tell if the respondents had registered trustees. As regards the appeal in the Court of Appeal, he said he was not aware about it. Regarding t exh. 7 (a) – (f) he confirmed that he did not author them nor were they addressed to the citees. Further, he confirmed members of the parties were summoned by the OCS and told to comply with court decrees/orders including the officials of the two churches. Despite this their pastors were chased away and they advised them to stay away from the prayer houses to avoid physical confrontation.
18. Regarding the appeal, the witness confirmed the appellants were the citees who had not obtained any stay orders from the Court of Appeal. Further he told the court it was the treasurer and the secretary who had authority over the pastors in their various churches, who have all along been involved in the suit and the appeals against the decree hence were aware of its contents.
19. PW 2 John Gikunda Mwanga adopted his affidavit sworn on October 2, 2019 and produced his Identity Card plus a posting letter as exh 8 & 9. He said on August 4, 2019 he reported at Makutano EAPC church but was told by Pastor Alex Kathurima that they belonged to Living Waters and had no instructions from their leaders to accept him as a pastor despite giving them a posting letter and a copy of the decree. They therefore refused him entry into the church premises.
20. PW 3 Isaiah Muriki M’Tuaruchiu adopted his affidavit dated October 2, 2019 and produced his ID card and a transfer letter as Exh. 10 and 11. He said he was confronted as he reported at his church on August 4, 2019. The same obtained with Pw 4 & 5 who produced their ID cards and posting letters as P exh (12), (13), (14) & (15) respectively. PW5 said, it was Cornelius Mworira, the 2nd cite who told him he was in the wrong place and after perusing the decree, he told him the decree did not state that the churches be taken over by the applicant. PW 6 and 7 produced their IDs & posting letters as Exh 17 & 18 and confirm that they were denied entry in their places of posting.
21. In their defence, the 2nd cite, Cornelius Mworira M’Tuambata adopted his replying affidavit dated December 19, 2019. As the chairman of Living Waters, the respondent he denied that he was served with any decree or other documents regarding the outcome of their appeal, including a notice to vacate any decreed premises. He also denied inciting anybody against the posted pastors by the applicant to the various church’s premises.
22. In cross examination the 2nd citee told the court he chaired the National Executive Council (NEC) which is the supreme body of the respondent whose final decision must be sanctioned by the Annual



General Meeting. He told the court the dispute concerned only five churches name Chugu church in parcel No Nyaki/Chugu/433, Themba on LR No Nyaki/Kihtoka/177, Runogone on LR No Nyaki/Kithoka/677 Makutano on LR No Nyaki/Kithoka/2888 and Kithoka on LR No Nyaki/Kithoka 2267. Regarding the 6th premises at Kiruma he said it was on rental premises while the one at Kiruma, parties opted out of the case. However, he admitted there was the 8th one, Kienderu on LR No Nyaki/Chugu/461.

23. The 2nd cite admitted he was the one who gave instructions to lodge the appeal. He also confirmed knowing the outcome of the appeal at the ELC court particularly the decrees. Further he acknowledged that he did not hand over the churches as decreed by the court since it was the churches themselves to do so since each church had its own leaders and that he lacked authority to do so.
24. The 2nd cite admitted that he never called an AGM to advise on the way forward since the Churches had those powers. He however said the NEC meeting took place he had not produced the minutes before court. He testified it was the respondent who had built those churches and could not vacate from them. As a member of Themba prayer house he admitted it was one of the churches they were restrained from stepping into as per P exh No (6) which upon service he took to their lawyers, who responded to it. On his part, he said he decided to keep quiet and let the lawyer respond to it. He denied that on August 4, 2019, a pastor was chased away from Themba church, though when he arrived at the church, pastor Mugira informed him of the issue. He however admitted meeting PW 5 that day at Themba Church. He confirmed Pastor Mugiira was still in charge at Themba Living Waters but denied he was the one who placed him there in total disobedience of the court orders.
25. The 2nd cite admitted there were no stay orders from the Court of Appeal. Further he denied service upon him of the court decrees/orders by Geoffrey Mburugu who he claimed he did not even know. The 2nd cite said that except Makutano church, all the other church premises were being administered by the respondent. He said though he was the national chair, of the respondent he was powerless for the churches had declined to attend the AGM though he had not given the churches and members any directions in writing or otherwise over the matter since it was the AGM which had powers to make resolutions. Lastly, he said his members could not obey something which they did not want and that applicant went out with their properties while the properties the respondent had belonged to it.
26. The 1st cite, Fredrick Rukunga adopted his replying affidavit sworn and filed on December 19, 2019 and produced minutes dated February 16, 2013 as D. exhibit (3). He said he retired as a general secretary of the respondent by 2013. He denied that the disputed churches were part of the applicant's properties. Further he denied being served with any court decrees/orders as the secretary general. He admitted the decisions of NEC were binding on all the churches below it. He said the issue in dispute was over ten prayer houses which the respondent was stopped from using after which they appealed to the ELC court. He denied that he allowed the churches to continue disobeying the court orders though he did not convene any NEC. Through he had a duty to obey the court order, he said he came to know from his lawyers over the outcome of the appeal. He said he left in 2013 after serving as a secretary general of the respondent for 10 years, but could not recall the exact date of leaving the office for he did not have the minutes to that effect. Though he resigned he had no acknowledgment receipt by the current secretary general.
27. The 1st cite admitted he had no letters from the Registrar of Societies confirming that he was no longer an official of the respondent. He admitted he authorized the filing of the appeal since he had knowledge of both the lower court judgment, its decree and the outcome of the High Court appeal. He however denied any service of the decree on 2nd and 3rd July 2019 as alleged by Geoffrey Mburugu who he said he did not know but confirmed his cellphone No was 0722892201. He confirmed he was a member of Munithu Living Waters church.



28. The process server Geoffrey Mburugu told the court he served the decree upon the two citees as indicated in his affidavit of service after identifying the recipients.
29. With leave of court parties herein filed and served written submissions dated June 21, 2022 and June 20, 2022 respectively.
30. The applicant submitted the respondent were sued in their capacity as registered national officials of the Living Waters Church and were appellants in this matter, whose outcome was in favour of the applicant. The decrees however have been disobeyed hence urge the court guided by Section 5 (1) of the *Judicature Act, TSC vs KNUT & 2 others* (2013) eKLR, *Kenya Tea Growers Association vs Francis Atwoli and 5 others* (2012) eKLR to find them guilty of contempt of court.
31. Regarding evidence, the applicants submitted the viva voce evidence had confirmed there was a valid decree/order which was unambiguous and within the knowledge of the citees over the properties they were enjoined from and being the part of the apex leadership of the respondents, it was clear in their mind what was required of them.
32. Further the applicants submitted they had brought enough evidence of service of the decree and given the citees also gave instructions to counsel to appeal, it was evident that they knew the contents of the said decrees/orders.
33. Reliance was placed on *Shimmers Plaza Ltd vs NBK Ltd* (2015) eKLR on sufficient evidence that the respondent and citees acted willfully, sought no stay of the decree but continued to use the prayer houses in total disregard of the decree which was an act of total impunity.
34. Given the evidence of the 7 witnesses all of them as ordained pastors of the applicant, the applicant submitted their evidence was clear that they were blocked, stopped, chased away and denied access to the prayer houses on August 4, 2019, which evidence was consistent, credible and truthful, unlike the respondent/citees who in their defence have remained defiant and un-apologetic.
35. The applicant submitted the citees could not escape responsibility, especially 1st cite who had not produced a letter from the Registrar of Societies confirming his alleged resignation. The court was urged to find his minutes an un authenticated and of no probative value.
36. On the standard of proof the applicant relying on *Mutitika vs Bacharini farm Ltd* (1985) KLR, 229 submitted they had met the threshold and urged the court to find the citees bore the responsibility to ensure that orders of the court as directed to the respondent were obeyed, since the respondent a legal person could only conduct its business through its human representatives and agents, the citees ,in particular the 1st citee who admitted his role included convening the annual general meetings and the national executive council meeting whose duties include issuing directives which were binding on all the church organs and members, whereas the 2nd cite chaired the said meetings.
37. Guided by *Shimmers Plaza Ltd* (supra) the court was urged to find the two cited officials culpable since they were in factual and legal position to comply with the orders but chose to do otherwise.
38. Further and as Theodore Roosevelt said no man is above law or below it also means permission is needed to obey law since in obeying law, it is of right and not a favour. The applicants urged the court to act otherwise its decrees were being trashed with impunity, its dignity and authority was in jeopardy.
39. On the other hand, the citees submitted the four elements to be proved on contempt based on *Katsuri Ltd vs Kapuchand Deparshar* (2016) eKLR include whether the order was clear, unambiguous and binding; within the knowledge or proper notice, acting in breach thereof and in a deliberate manner and must be proved on a standard higher than in ordinary civil suits.



40. The respondent submitted that the orders issued were not of eviction but permanent injunctive orders and since they had been in occupation of the suit premise they have not disobeyed the said orders.
41. It was submitted the 1st citee ceased being an official in 2013 hence any service upon him was irregular. In any event the respondent submit it was prejudicial and unfair of the applicant to claim disobedient on the applicant to claim disobedience on their part for orders served only one day before they started occupation of the same since the pastors were not aware of the decree. Going by *Katsuri Ltd* (supra), the respondent submitted their actions were not deliberate, there was no fair notice to comply, their pastors were ambushed without due notice and there was no malice intent or deliberate conduct.
42. The respondent submitted the test for when disobedience occurred as set out in *Samuel M.N Mweru & others vs NLC & 2 others* (2020) eKLR & was whether the breach was committed deliberately or malafide and contempt should be a last resort as held in *Katsuri Ltd* (supra).
43. In sum the respondent submitted the applicant had failed to meet the threshold to cite them for contempt for lack of service, notice was short, prejudicial and it was not deliberate.
44. The power to punish for contempt of court for this court is derived from Articles 10, 159 & 160 of the *Constitution*, Section 5 of the *Judicature Act*, Sections 63 & 64 of the *Civil Procedure Act*, Order 40 *Civil Procedure Rules*, Section 29 of the *Environment and Land Court Act 2011* and Rule 43 of the Practice Directions of ELC court 2014.
45. Contempt has been defined as that conduct that defies the authority or dignity of a court and which interferes with the administration of justice. It is not aimed at protecting the personal rights of the judiciary or personal right of parties or litigant. It is not only actually the dignity of the court which is offended but goes to challenge the very supremacy of the law. See *Refrigeration and Utensils Ltd vs Gulabchard Popattal Shar & another* Civil appeal No 39 of 1990.
46. Article 1 of *Constitution of Kenya 2010*, states that all sovereign powers belong to the people of Kenya and shall be exercised in accordance with the *Constitution*. Article 1 (2) thereof provides that sovereign power is delegated to state organs while Article 2 states the Constitution is the supreme law binding all persons and state organ and places an obligation on every person too obey the courts. Article 4 provides Kenya as founded on national values and principles of governance set out at Article 10 among them the rule of law which is fundamental in the administration of justice, meaning that a person who walks into the courts of law and gets justice should as well walk out knowing whatever the outcome would be binding, obeyed and enforced against the person to who has been directed to comply to it.
47. In *TSC vs KNUT* (supra) the court said a court order was a directive and not a mere suggestion or opinion, which is issued after much thought and with circumspection and if not obeyed it means opening the door to chaos, anarchy, disorder and the rule of the jungle. The court held any dissatisfied person by an order or decree has a right to follow the known avenues of review or appeal and that defiance was not among the options.
48. In *Shimmers Plaza Ltd* (supra) the court listed four types of contempt, namely breach of judgment, order or undertaking to do or abstain from doing an act, interference with the due administration of justice; contempt on the face of the court and lastly making false statement of truth or disclosure statement.
49. In order to establish contempt of court four key elements must be proved namely; existence of an order or decree which is clear and in certain terms, knowledge by the party; breach thereof; in willful and deliberate manner. See *Katsuri* (supra).



50. In *Mutitika vs Babarini Farm Ltd* (supra) the court held since a man must be sent to prison, contempt must satisfactorily be proved on a balance higher than proof on a balance of probabilities but below reasonable doubt. In *Samuel M.N Mweru* (supra), it was stated that if courts were to perform their duties effectively and remain true to the spirit which they are sacredly entrusted with, its dignity and authority has to be respected and protected at all costs. The court held by exercising the power to punish for contempt, it would be upholding the majesty of the law and of the administration of justice, the foundation of which was the trust and confidence that the parties have in the judiciary to deliver fearlessly, impartial justice, since when that foundation is shaken by acts which tend to create dissatisfaction and disrespect of its authority, the very edifice of judiciary is eroded. The court held it was a crime to unlawfully and intentionally disobey a court order.
51. Applying the above principles and case law, the applicant has invited this court to find the acts of the citees falling within the parameters of contempt of court as set out in our laws and the decisions arising out of our courts.
52. The applicant has through sworn testimony and oral evidence stated two decrees were issued against the citees as agents and human representatives of the respondent in their presence and were also personally served upon them.
53. Further the applicant has stated, testified and submitted the citees knew the contents of the decrees but have chosen to ignore, disregard and perpetuate the conduct which they were enjoined from doing which are acts of impunity hence the court must flex its muscles and take the appropriate action against the citees otherwise the decrees issued will remain a mockery and of no consequence.
54. On the other hand, while the respondent and citees acknowledge the existence of the decrees they deny service of the same upon them as alleged or at all. Further the citees state they have not disobeyed any orders for they were in occupation of the disputed parcels of land prior to the decrees, that they were members of the applicant before change over who acquired the properties and hence are occupying their own properties but under a new umbrella, the respondent church outfit.
55. Additionally, the citees have testified they no longer have authority over the individual churches and members, the notice to execute was too short, unreasonable and lastly there is a pending appeal at the Court of Appeal hence it was only fair that the status quo be maintained pending the hearing and determination of the existing appeal.
56. As a rejoinder the applicants have submitted that the orders were in clear and unambiguous manner, the same were directed at the respondent through the known officials who were also the person who have appealed against the judgment herein hence cannot escape responsibility and that there are, no stay orders against the decree. Further the applicant testified and submitted that the citees have done nothing as was within their powers to direct compliance upon their members but instead have incited their churches and members to defy the orders claiming there was no order of eviction from the disputed churches.
57. There is no dispute that the respondent through its registered officials Rev. Andrew Nyaga (deceased) Fredrick Ntee and Cornelius Mworisa as Chairman, Secretary and Treasurer sued the applicant in Meru CMC No 721 of 2007 and the applicant sued them in Meru CMC No 2004 following which both appealed to this court and the two appeals were consolidated. A judgment delivered on February 7, 2018. A decree was thereafter issued on July 22, 2019 in which the respondent was permanently enjoined from interfering with LR 1713, 2885, 2267, 576, 461, 250, 677 & 433.
58. The appellant has said over and above serving the citees with the decrees, the outcome of the judgment was known to the citees since they appealed against the same to the Court of Appeal.



59. Looking at the plaint dated December 3, 2004 at paragraph 4, the applicant pleaded it was the registered owner of 8 titles for Chugu, Themba, Runogone, Makutano, Kihtoka, Karumanthi, Kienderu, Mwiteria and Kaither namely LR 461, 2885, 1713, 677, 250, 576, 677 & 433 respectively.
60. These were the properties and the prayer house the respondent was enjoined from interfering with and which the respondent by its defence dated February 18, 2005 had not counterclaimed as belonging to it.
61. Going by the applicant's P exh 6 for LR 1713, exh 7 for LR 250, 250 exh (8) for LR 2267, exh (a) for LR 2885 exh 10 for LR 461, exh 11 for LR 433, exh 12 for LR 677, LR 2587, D exh 9 LR (2587) P exh 10 (433) all those properties at the time were in the name of the applicant's as per its, exh 1 & 2 the certificate of incorporation.
62. It cannot therefore be true from the affidavits and mouths of the citees that at the time the decrees were passed the said suit properties belonged to the respondent. On the same vein the court rejects the argument and defence that the decree issued by this court was not clear and that the citees did not know what was expected of them.
63. Indeed, looking at the copies of records from the land registrar at the trial court there was no doubt that the properties were registered in the name of the applicant and not the respondent. Once the respondent left the applicant church and assumed a different name, obviously they could not cling on to and remain on properties lawfully belonging to the applicant. Similarly, the citees cannot possibly hold on to those properties as if the court order and decree meant nothing or was a mere piece of paper.
64. The citees cannot feign ignorance of the outcome more so when they instructed their lawyers to appeal against the said decision which instructions were acted upon. Once the court pronounced itself on the appeal it was no longer a favour but a directive with a force of law for the respondent and the citees to comply with it by vacating the suit premises.
65. The court need not have ordered for any eviction. The title deeds of as early as 1965, up to 1980' were clear. The respondent pleaded that it came into existence in 2003 or thereabouts when it got a certificate of registration. Clearly it cannot be true the respondent owned the said properties before it came into existence.
66. The citees knew the outcome of the appeals and what was expected of them to simply comply with the orders by handing over vacant possession and ceasing to interfere in which way was with the applicant's possession, use and occupation of the suit premises.
67. The citees did not make any single attempt to exercise their mandate as not only officials, church members but also parties to this decree to seek for the compliance of the court decree. Instead the citees have feigned ignorance, shown indifference, tried to depict hopelessness and lack of mandate yet while they were filing the appeal both before this court and in the Court of Appeal, they had assumed full responsibility. Such a conduct shows reluctance, deliberate attempts and willful acts of ignoring and or disobeying court orders.
68. The evidence by the citees shows they knew what they were supposed to do but did the opposite knowingly and deliberately to ensure that the course of justice was obstructed. The citees possess and wield immense powers under the law as a registered official of the respondent. If they were no longer officials of the respondent they could not have had locus standi before any court of law. The citees have tried to say the suit properties are under the custody of the trustees who are separate from them and who the applicant has ignored. That cannot be true going by the evidence before this court namely P exh 1-8 and D exh 9-11. All are in the name of the applicant and not the Living Water Church.



69. The citees obviously are out to distort even the most basic facts in this matter obviously as a way of perpetuating impunity and in willful disobedience of court decree.
70. It would be a sad day in the history of this court in particular and judiciary at large if it was to condone such acts of lawlessness in total disregard of its orders.
71. In the premises I find the citees guilty of contempt of court and put them on their mitigation before sentencing.

The respondent and the citees shall also avail all their pastors and committee members for the decreed properties during the sentencing.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 19TH DAY OF OCTOBER, 2022

In presence of:

C/A: Kananu

Murango Mwenda for applicants

Miss Mukamburu for respondents

HON. C.K. NZILI

ELC JUDGE

